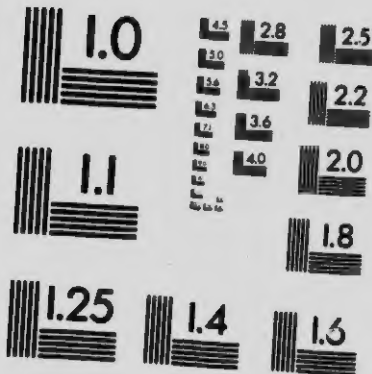


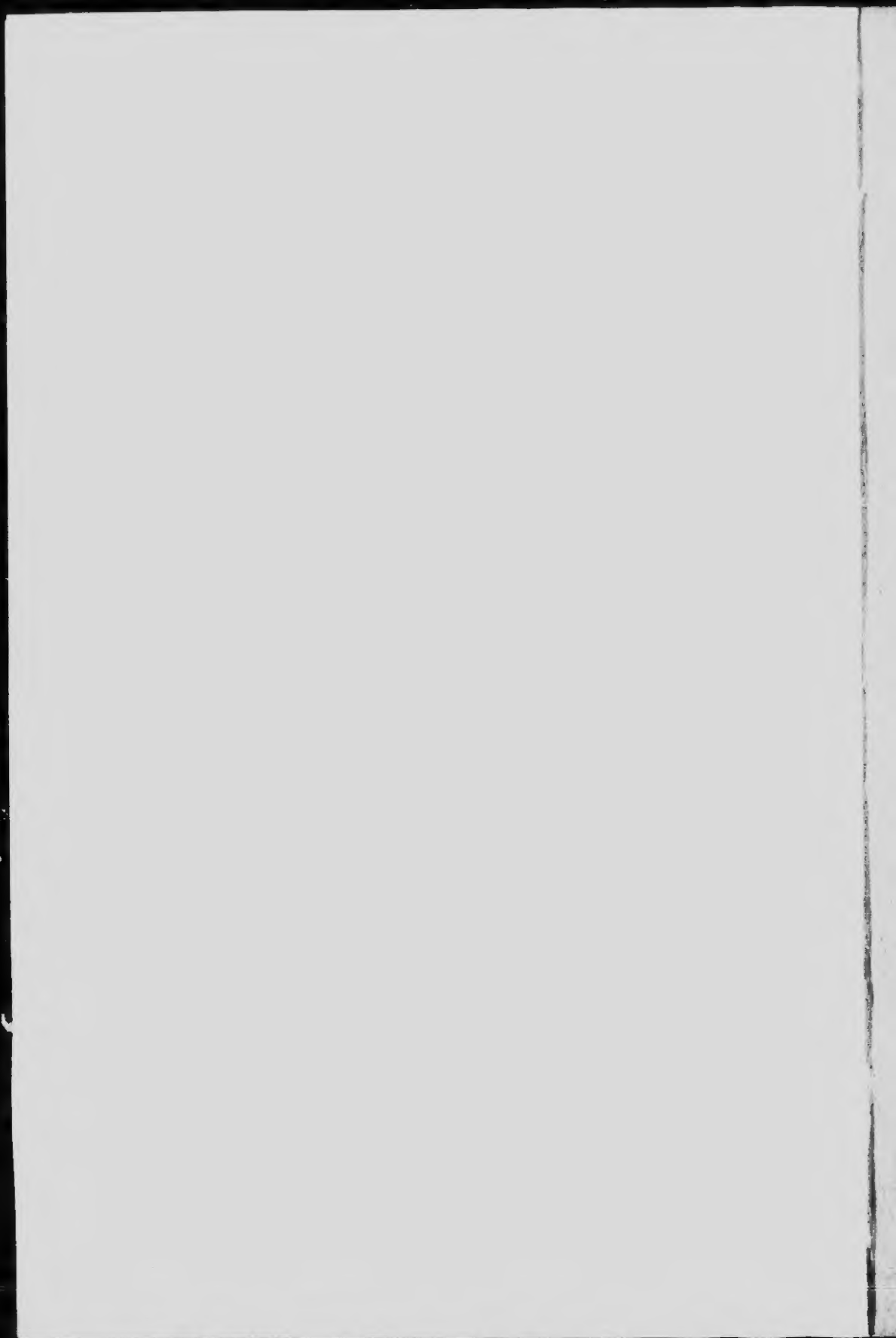
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MEMORIAL

ON BEHALF OF

EDWARD SPENCER JENISON

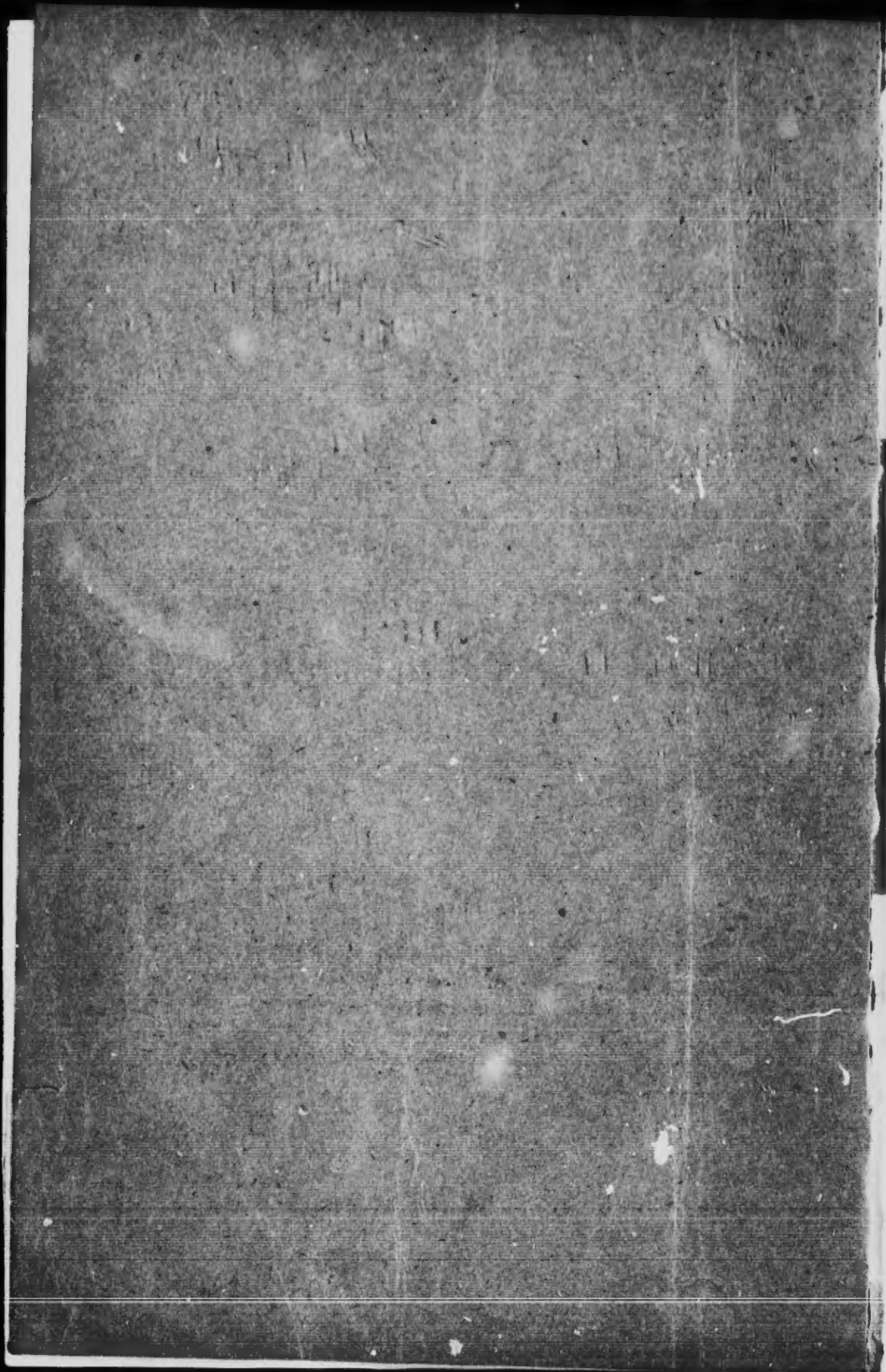
MADE TO

THE LEGISLATORS OF ONTARIO

AND TO THE PUBLIC

**SHOWING WHY CERTAIN PORTIONS OF HIS PROPERTY SHOULD NOT
HAVE BEEN CONFISCATED; WHY CERTAIN OTHER PORTIONS OF
HIS PROPERTY SHOULD NOT HAVE BEEN JEOPARDIZED, AND
WHY ALL OF HIS PROPERTY RIGHTS IN THE MATTER OF THE
WATER-POWER OF THE KAMINISTIGUIA RIVER SHOULD BE
RESTORED TO HIM.**

1903



MEMORIAL

ON BEHALF OF

**DO NOT THROW THIS ASIDE UNTIL
YOU KNOW WHAT IT CONTAINS**

Every legislator who intends to do his sworn duty; every citizen who desires safety for his property; every journal that hopes to be with the right; everyone who believes that no power should take life without guilt and without trial, or property without compensation, should read this, and express himself.

Water power or

**SHOWING WHY CERTAIN PORTIONS OF HIS PROPERTY SHOULD NOT
HAVE BEEN CONFISCATED; WHY CERTAIN OTHER PORTIONS OF
HIS PROPERTY SHOULD NOT HAVE BEEN JEOPARDIZED, AND
WHY ALL OF HIS PROPERTY RIGHTS IN THE MATTER OF THE
WATER-POWER OF THE KAMINISTIGUIA RIVER SHOULD BE
RESTORED TO HIM.**

1453.



MEMORIAL

ON BEHALF OF

EDWARD SPENCER JENISON

MADE TO

THE LEGISLATORS OF ONTARIO

AND TO THE PUBLIC

**SHOWING WHY CERTAIN PORTIONS OF HIS PROPERTY SHOULD NOT
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WATER-POWER OF THE KAMINISTIGUIA RIVER SHOULD BE
RESTORED TO HIM.**

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INTRODUCTION.

The object of this Memorial is to make clear, as a matter of justice, the need of remedial legislation in behalf of Edward Spencer Jenison. Without this action by the Legislature, the Province of Ontario must be placed in the attitude of desiring to take from Mr. Jenison without compensation the results of eight years of useful toil, and many thousands of dollars of invested property.

This Memorial is accompanied by four official documents, explanatory and justificatory, in the hope of making the case of Mr. Jenison more clear and convincing to the honorable gentlemen addressed, and to the public. These documents will be often referred to:

EXHIBIT A.

The first of these documents is a copy of Chapter 176, 60 Victoria, assented to April 13, 1897, entitled "An Act to enable Edward Spencer Jenison to develop and improve a water privilege on the Kaministiquia River," et cetera. Upon this Enactment, which was passed without time-limit, Mr. Jenison based his subsequent labors and investments, although, as will be shown, interests that were hostile to Mr. Jenison succeeded in the incorporation into that act of sections that were unfair to him and prejudicial to the public service.

EXHIBIT B.

The second of these documents is a copy of Chapter 120, 62 Victoria (2), assented to March 29, 1899, entitled "An Act to amend the Act to enable Edward Spencer Jenison to develop and improve a water privilege on the Kaministiquia River, and to extend the provisions thereof." This Enactment was passed at the instance of Mr. Jenison, but active opposition on the part of the same rivals resulted in amendments prejudicial to the accomplishment of Mr. Jenison's plans, and other action was taken in the cities affected looking to the unjust embarrassment of the Jenison interests. Incorporated with this law are copies of the separate agreements made and voted favorably upon between the people of the cities of Fort William and Port Arthur on the one side and Mr. Jenison on the other side. It will be shown in this Memorial that the Mayor of Port Arthur defaulted in his duty of signing the agreement after the voters had given it their sanction.

EXHIBIT C.

The third of these documents is a copy of an Enactment entitled "An Act respecting the Town of Fort William, 1902," assented to March 17, 1902. Under this misleading caption the

rights and property of Mr. Jenison were artfully confiscated by the parties who made use of the legislative power, and the Province was put in the attitude of giving its approval to local agreements with rivals of Jenison—agreements that had not received the affirmative vote of the electorate affected—and these locally illegal agreements were substituted for the agreements with Jenison that had received the full sanction of the rate-payers of Fort William and the approval of the same Legislature. *The act of confiscation by the Province* may best be seen at a glance by reading sections 23 and 24 of this Exhibit C, where the laws are arbitrarily repealed that enabled Edward Spencer Jenison to proceed with his important and costly enterprises, and the arbitrators are forbidden to reimburse him. Note that in Section 25 the Legislature declares that the agreement of the attorneys dispossessing Mr. Jenison is valid and binding, while Section 34 declares the same agreement shall not be valid and binding until voted upon by the rate-payers. This, as well as the misleading caption, tends to show the hurried and underhanded manner in which the legislation was secured by designing persons.

EXHIBIT D.

The fourth of these documents is a copy of the proceedings before the Private Bills Committee of the Ontario Legislature, May 27, 1903, in which the Mayors of Fort William and Port Arthur joined with Mr. Jenison's spokesman in petitioning for an act of the Legislature that would restore to Mr. Jenison the rights and property that had been confiscated. At this meeting the rivals of Mr. Jenison were able to make the hearing practically *ex parte*, and upon insufficient information the committee refused to approve Bill 96, entitled "An Act to extend the provisions of the Act to enable Edward Spencer Jenison to develop and improve a water privilege on the Kaministiquia River." It is this or similar legislation that this Memorial is now intended to support, as it is believed a true history of the case has never before come to the legislative and executive authorities.

MR. JENISON'S CASE

EARLY VISITS OF MR. JENISON TO THE KAMINISTQUIA RIVER, AND THEIR RESULTS.

Traveling westward along a line drawn between Fort William and Port Arthur, at a distance of 16 miles, one would come upon the Kaministiquia River. The Kakabeka Falls are situated a quarter mile up-stream from the point in Mining Location 10-x in the township of Oliver, where the river enters the township of Paipoonge. For a stretch of about one mile above the falls the lay of the country is not much out of a level. Thereafter, within a quarter of a mile, the Ecarte Rapids makes a fall of 65 feet. Mr. Jenison pronounces Kakabeka to be "one of the grand waterfalls of the world." He first saw it in 1895.

At the time of Mr. Jenison's early investigations there was no settlement nearer than one mile on the east, and none to the westward—the westward frontier of civilization as it then existed had been reached.

Examination of property titles thereabouts developed the fact that the falls lay in nearly the center of Mining Location 10-x; that the location itself was owned by the Kakabeka Falls Land and Electric Company (which, for purposes of brevity, we will hereafter denominate the "Kakabeka Company"; that this company had illegally platted the Mining Location so as to be on both sides of the river and to surround the falls; that the company had laid out and exploited a paper town, publicly offering to sell parcels of the ordinary city lot size for upward to \$350 each, and endeavoring to convince customers that here, six miles from any railroad and 13 miles from the nearest navigable water, in an entirely uninhabited region, there was soon to be a great manufacturing town. With this statement, legislators may form a definite opinion of the good faith of the projectors.

This scheme, as described, had been bonded for \$200,000, and the Company had entered into contract with the Crown Lands Department to develop the water power within two years; to secure the fulfillment of that contract the Company had executed a bond in the sum of \$10,000. The projectors of this Company, with their assigns, are the rivals of Mr. Jenison, and, later on, when they will be noted herein (Exhibit D) as alleging lack of faith on the part of Mr. Jenison, the reader is cautioned to keep in mind the fact that, although ten years have passed, there has been no development, *nor has the bond been paid*. The Company has been successful in delaying Mr. Jenison, and in causing the Province to confiscate Mr. Jenison's property, but it has done no other work.

Mr. Jenison became convinced that the Company did not own Kakabeka Falls, but he also determined that it was not alone

worth developing into electric energy. After months of investigation and surveys he concluded that if he could acquire the right to divert the course of the river at the head of Ecarté Rapids, and to lead the waters along a level to a point a half mile below Kakabeka Falls the combined fall of the rapids and the falls could be concentrated in one place. With this right, and also with the right to regulate the flow of water out of Dog Lake and Shebandowan Lake, assuring water in winter and in dry times—if these rights could be secured, a feasible and valuable water power could be wrought out.

Mr. Jenison, setting forth upon this design, bought all the needed private lands, with the exception of a few acres of Mining Location 10-x, across which it was necessary for his projected canal to pass. These few needed acres he also sought to purchase, but the price asked was \$60,000. (At a later date the award made in proceedings for expropriation was only \$1,390.) Mr. Jenison also needed some of the chain reserve along both sides of the river and around the lakes. By contract with the Crown Lands Department in April, 1896, Mr. Jenison obtained the right to use those needed lands.

Mr. Jenison was still without the right to cross the land in Mining Location 10-x, and now had recourse to the statutes: Chapter 141, Sec. 2 (1) R. G. O. 97—that is, "The Water Privileges Act"—reads as follows: "Any person desiring to use or improve any water privilege, of which, *or a part of which*, he is at such time the legal owner or occupant, for any mechanical, manufacturing, milling, or hydraulic purposes, by erecting a dam and creating a pond of water, increasing the head of water in any existing pond, or extending the area thereof, diverting the waters of any stream, pond, or lake into any other channel or channels, constructing any race-way, or other erection of work in connection with the improvement and use of said privilege, or by altering, renewing, extending, improving, repairing, or maintaining any such dam, raceway, erection, or work, or any part thereof, shall have the right to enter upon any lands," etc.

"2. If, upon application to the County Judge, as hereinafter provided, such person obtains authority, he shall be at liberty to take, acquire, hold, and use such portions of said lands so examined as he may deem expedient for the completion, improvement, or maintenance of the water privilege and works in connections with the same."

With this statute in hand, with possession of both ends of this water privilege (that phrase actually meaning all the water privilege save a very small part) Mr. Jenison made application to the County Judge, and, after a long and exhaustive trial, with the Kakabeka Company as defendants, the Judge granted the order in compliance with the meaning of the statutes, as construed by him and by Mr. Jenison.

But the Kakabeka Company appealed, and the order of the County Judge was annulled on the ground that the water privilege was being extended, not improved. In vain Mr. Jenison cited the language of the statute—namely, "*of which, or a part of which*, he is at such time the owner." This test, to Mr. Jenison, seemed

to forbid such a ruling on the appeal, but, as there was no other relief within the law, Mr. Jenison asked and obtained from the Legislature of 1897 the act which is copied in Exhibit A (Chapter 106, 60 Victoria), to which the reader is respectfully referred, as it may now be read in full with understanding of its terms, and of the peculiar provisos that accompanied it. To explain these, it is useful to note that the *personnel* of the Kakabeka Company was and is the same that had control of the Sault Ste. Marie effort. When the act in Exhibit A was under consideration by the legislative committee, the "Soo people" at Toronto were maintaining a lobby to secure subsidies for themselves and labored for and secured the insertion of Sec. 20. Now the Government held, with Jenison, that the Kakabeka Company did not own within 66 feet of the river, on account of the chain reserve; and yet the statute shown in Exhibit A provided that if Jenison were allowed to expropriate the small parcel of needed land in Mining Location 10-x, from its owners, the Kakabeka Company, then the arbitrator should figure the damages as though that Company were the owners of the water privilege. Jenison was thus compelled to pay the Company for what it did not own. This efficient work of the Soo lobby may be seen in Sec. 20 of Exhibit A.

And further: Instead of giving to Jenison the clear right to expropriate the small link that was necessary to his enterprise, which would have been a legislative act of comity in reference to the evident intention of Chapter 141, R. G. O. 97, as previously quoted in this Memorial, it will be seen at Sec. 16 of Exhibit A that before Jenison was to be allowed to expropriate any of Mining Location 10-x, the arbitrator was to determine whether sufficient power to supply the local demand could be made on Ecarté Rapids.

This clause (16 in Exhibit A) caused a long, bitter, and expensive contest, and only the painstaking effort and sense of justice of the arbitrator made it possible to reach the next question involved; but it was reached, as were the succeeding ones, the award was made, and though that award was appealed from, it was confirmed by both the lower and the upper court. This award divided the damages into three parts: (1) The value of the land taken; (2) the damage to the remainder of the lands due to severance; (3) the damages to the water power.

Now this award having been made in due form, and paid; the award having been confirmed by the court; confirmation having been handed down from the upper court, we may read in Sec. 4 of Exhibit A that the land so expropriated should "become and be thenceforward vested in fee simple" in Jenison, "his heirs and assigns forever."

The very kernel of this Memorial lies in the belief then held and acted on by Jenison, that no succeeding act of the law-making body would or could take away that property without compensation.

Of course, the long arbitration just recounted, with its appeals, together with the delays secured by the Kakabeka Company, consumed many months of time. The final settlement of the matter

came so late in 1898 that actual work could not be advantageously begun, and this brings us to a second chapter of the case.

FURTHER SURVEYS BY MR. JENISON.

In these times of delay, always enforced by the Kakabeka Company, and also in the fall and winter of 1898, Jenison made extensive surveys of the country lying between the falls and the towns; and he found that if the canal before planned were turned east at the north line of Mining Section 10-x, it could be run to a large natural reservoir just back of the towns, where the water-level would be 300 feet above that of Thunder Bay. Here a head of 300 feet would be available for power instead of the 180 feet possible at the falls. This would do away with the long transmission by cables and poles, the waste, and the repairs, and would also furnish the towns with a gravity water supply.

The Canadian Northwest had by this time begun to show decided growth, and the future of both Port Arthur and Fort William appeared to justify this broadening of Jenison's ideas and the greater investments that he was entering upon. Mr. Jenison had both towns cordially with him. He made contracts with both towns by which he was to supply them with electricity for heat, light, and power; the Councils of both towns passed the by-laws, the matter was submitted to the rate-payers and both electorates approved the action of their Councils. Mr. Jenison, with these contracts in hand, now petitioned the Legislature to pass an act enlarging the provisions in the statute quoted in Exhibit A, so as to enable him to carry out the new plan outlined above. We have now arrived at a point in this narrative where the investigator may profitably read Exhibit B in full. In that Exhibit will be found, as a part of the statutory action, or as a cause for it, the action of the two towns, through their electorates, in ratifying the contracts made for the furtherance of Mr. Jenison's plans.

The act passed (Exhibit B) became Chapter 120, 62 (2) Victoria. It met the strenuous and dangerous opposition of the Kakabeka Company, and was assented to March 29, 1899. Upon returning with the contracts to the towns the Mayor and Clerk of Fort William promptly signed; but the Mayor of Port Arthur refused to keep faith for his electorate, and never would sign. The project for a reservoir had been a most liberal one, even with both towns as patrons; but with one town defaulting, naught but delay in financial quarters must result, as the prospective income from Fort William alone could by no means suffice to make the undertaking a sound one.

Meanwhile, too, there were other causes for delay. The final plan involved the purchase of nearly 5,000 acres of land between the towns and the falls. When the bill (Exhibit B) was before the legislative committee, strong opposition developed against allowing to Jenison expropriatory powers so great. However, Jenison gave his word to the Chairman of the Committee that he would not put this power into use until he should have exhausted every other means of acquirement. To keep his word, he with

his aids spent all of the time from March, 1899, until 1901 in the effort to acquire the needed land by friendly overtures, and he only began proceedings looking to expropriation when the representative of the owners said to him that it was the only way to obtain the property.

In the summer of 1901 Mr. Jenison obtained from his financial associates their consent to constructive work as soon as Port Arthur should sign the contract for which its rate-payers had voted. A large camp was built, the number of men at work was continually increased, but in the absence of Jenison there was a strike, and this, together with the continued default of the Mayor of Port Arthur, again deprived Jenison of the power to act as promptly as he had planned and desired to do.

Section 16 of Exhibit B (the Act of '99) required that work on the new plan should be commenced within a period of six months from the passage of the act. Work was begun June 30, 1899, in the presence of many witnesses, thus providing against default. The same section of the law says the work "shall be completed within a period of three years from the time fixed as aforesaid for commencement, or within such further time as may be granted by the Lieutenant Governor in Council, so as to have ready and available for use a hydraulic capacity for at least 10,000 horse-power." This gave to Jenison until September 29, 1902, in which to complete the work above named.

Now, as a further embarrassment, and further act of unkept faith, early in 1902, the Town of Fort William, which had itself signed with Jenison, petitioned the Legislature to pass an act authorizing the town to develop 10,000 horse-power at Kakabeka Falls for municipal and commercial purposes. The project called for expropriation under the ordinary rules for compensation. It may well be imagined that Jenison opposed a measure so fatal to his contract. But in hearings before the Committee of the Legislature the best he could do was to obtain a promise for a proviso that if Jenison, within 90 days, should deposit \$50,000 as evidence of good faith, the act should be of no effect. The Chairman authorized Jenison to have his attorney draft such a proviso. But even this much was not eventually secured.

THE ACT OF CONFISCATION.

When the Fort William bill came up for its next hearing, the "Soo lobby" was strongly intrenched and had made a new move. The attorney of the Kakabeka Company had secured a contract with the solicitor for Fort William by which Fort William was kept away from Kakabeka Falls and sent on to Ecarté Rapids, although the arbitrator under the act of 1897 (Exhibit A) had found a water power at Ecarté of not to exceed 3,500 horse-power. This contract between the two lawyers was totally unauthorized by either the Fort William Council or the electorate. On the contrary, the Council instructed their Delegates by wire: "Kakabeka Falls or nothing."

We are now ready for a perusal of that portion of Exhibit C which pertains to the assumption of Jenison's property without

compensation. The Kakabeka Company was in possession of the legislative ear. All sorts of conflicting amendments were added to the act passed March 17, 1902, though under no reading of Jenison's acts could his time have been considered to have expired before Sept. 29, 1902, and he was in no way in default, and Sections 13 to 34 (Exhibit C) may be clearly seen as having but one purpose—namely, to take away Mr. Jenison's property and to pay him nothing for it. Fort William is not given the right to develop Ecarté Rapids, by name, but if it do so develop it, the water must be returned to the river "above" the falls. The Kakabeka Company is not given the right to develop the falls, but its solicitor obligated the Company to pay half the costs of the legislation; this has never been paid.

It is important now to refer again, but with more particularity, to the details of the contract mentioned in Section 14 of Exhibit A, made April 21, 1896, between the Commissioner of Crown Lands and Edward Spencer Jenison. In the act (Exhibit A) containing this Section 14 there is no time limit; there is no forfeiture; there may be assignment. Many have been misled by their reading of Section 14 (Exhibit A). The contract therein referred to was made with an inferior branch of the Government and is abrogated by this act (Exhibit A) of 1897—a contract made with a superior branch. True, the last confirms the first, but with added power.

Now read: Section 14 (Exhibit A): "The rights, powers and privileges hereby conferred upon the said Edward Spencer Jenison with reference to any of the Crown Lands of the Province of Ontario which may be affected by the said works shall be as to such lands subject in all respects to the terms of the contract" . . . (of April 21, 1896).

Let the reader now understand that the Hon. A. S. Hardy, Chairman of the Private Bills Committee when the act (Exhibit A) of 1897 was passed, had himself been Commissioner of Crown Lands when the contract of April 21, 1896, was made. Commissioner Hardy was not satisfied, at that time (1896), with the report of Mr. Jenison that no Crown Lands would be flooded around Dog and Shebandowan lakes, and Mr. Jenison therefore sent a survey of Mr. Hardy's selection, Mr. H. B. Proudfoot, O. L. S., to survey and report on these lakes. Mr. Proudfoot's report confirmed Mr. Jenison's views, but Commissioner Hardy demanded that, when the works should be completed, if it were found that Crown Lands were flooded, then Mr. Jenison must pay for those flooded, and a clause was inserted in the contract of April 21, 1896, to that effect. To this, and to this alone, does Section 14 (Exhibit A) refer. The records of the Crown Lands Department will verify this statement, because Mr. Jenison wrote to the Hon. Mr. Hardy, after the 1897 act (Exhibit A) was passed, asking him to recognize the facts involved; a memorandum to that effect was made by the Chief of the Survey Department, and the memorandum was approved by the Hon. Mr. Hardy.

Now, so far as aid for either town may be concerned, the confiscatory act of 1902 (Exhibit C) was thoroughly fraudulent in

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its dealings with the water power. It merely aims to repeal all and every act or acts of the Legislature conferring permissions, rights or privileges on Jenison, without any default on Jenison's part, and through default on the side of parties under contract with Jenison. The act of 1902 (Exhibit C) says that these same defaulting parties shall not be liable to Jenison except for the value of the *land* he owns within one mile of Kakabeka Falls or Ecarté Rapids, and the value of such work of construction (there is none there!); and the value of such of his plans as they shall want (they would want none!). In other words, if Fort William had expropriated under that act, Jenison would have received the value of about 100 acres of rock and sand, all valueless for farming or any other purpose, and at no time, or by any of the witnesses of value, appraised at more than \$3 an acre. By many the land was deemed to be valueless.

To further explain the hardships of the act of confiscation: Mr. Jenison is left with land in all sorts of irregular shapes scattered along 16 miles of territory. It is all wild swamp, most of it on no road. He had to buy it under adverse conditions, as each owner knew Jenison must have that particular place. He must sell it, if need be, under conditions exactly the opposite. The land, in fact, is but a small portion of his property rights, bitterly and patiently earned. The compensation contemplated by the confiscatory act of 1902 (Exhibit C) is entirely different from what was stipulated when Jenison himself was authorized to expropriate from the Kakabeka Company and others; it is entirely different from that provided in the General Water Privileges Act. He has not been accorded the rights that appertain to property-owners the civilized world over.

After the act of 1902 passed the Legislature (Exhibit C) Mr. Jenison petitioned the Governor to disallow it. Two hearings of the solicitors were had before the Minister of Justice. It was thereupon reported to Mr. Jenison that the Minister had declared the Act (Exhibit C) was "damnable and ought to be disallowed." It was understood by Mr. Jenison that the Minister of Justice would communicate with the Attorney General urging the correction of the wrong. During the year in which the act might have been disallowed, Mr. Jenison understood that the Attorney General had been seen, and an agreement had been reached that if the Jenison people would get the towns with them and apply for an Act reinstating Jenison they would help to pass it.

PAST EFFORTS TO RIGHT THE WRONG.

In view of what Mr. Jenison believed to be the assurances of statesmen and legislators looking toward justice, he petitioned the Legislature at its next session thereafter (that of 1903) asking for remedial legislation. At the hearing granted by the Private Bills Committee the Mayors of Fort William and Port Arthur both appeared in support of Mr. Jenison. An official verbatim report of that hearing is appended as Exhibit D, and a perusal of that document, along with the statements herein made, will put the investigator in possession of sufficient evidence to act with a due regard to the rights of all concerned.

The financial associates of Mr. Jenison, who were to invest the money for the development of his plans, conceived the opinion that Mr. Jenison had been too often before the Committee already, and it would be better if he should stay away. To this view he necessarily assented. But it will be seen in the report (Exhibit D) that the Committee were given anything but a flattering view of his case, of his record for good faith or of his plans.

Mr. Clergue, with his solicitor, Mr. Watson, appeared for the Kakabeka Company, the old-time adversaries of Mr. Jenison, and between them they took up nearly all the time of the hearing.

Upon reading the report (Exhibit D) and learning that Mr. Walter Barwick, K. C., appeared for Mr. Jenison's interests, the investigator may easily be astonished that statements so damaging to Mr. Jenison should have been iterated by Mr. Barwick, who repeated that "Mr. Jenison was not fair to the Committee, or he would have told the Committee last year, as the fact was, that he was not the owner of the proposition." This statement would have sounded harshly coming but once even from the opposition, for it was erroneous; but to be said twice by one's own advocate, it was more than a double misfortune. Mr. Jenison always has been, was, and now is the owner of the larger part of this property; he always told the Committee and everybody else that he had not the money with which to complete the enterprise; that he had associates who did not at that time wish to be known in the matter; that, as soon as he could remove the obstructions in his way, all of which were unjust, there would be plenty of money; but, even if it were as Mr. Barwick put it, it seems small reason to take away a man's property because he has no more besides.

As a matter of policy, looking backward over the eight years he has devoted to this water privilege, Mr. Jenison believes he made but one serious error. He should have compelled the Mayor of Port Arthur to do his sworn duty and sign the contract ordered by the Council and authorized by the rate-payers of Port Arthur.

PLANS OF THE ADVERSARY.

It is reported that the Kakabeka Company, perhaps in its own name, perhaps under an *alias*, will ask legislation giving it Mr. Jenison's rights. Let us note some of the obstacles in that Company's way, and see how soon it could relieve the needs of the towns, even supposing the legislative action asked for should be taken. The Company has not the money—must go to the people for it. Is there any hope of getting it, on the present recital of Mr. Jenison's case, and with Mr. Jenison's right of appeal to the Privy Council on the constitutional question of the right of anybody to take his property without compensation? Suppose investors get their money in, and Jenison should get a decision in his favor, would they desire to have their improvements on his property?

The Dartmouth College case, which was decided in the States, largely from English law, by which the principle of the inviolability of chartered property was fully established, was handed

down when the United States were just about as old as the Canadian Dominion is now.

MR. JENISON'S HOPES.

But a statement so frank and full as it is hoped this Memorial has now grown to be would not be placed before the honorable legislators of the Province did it not seem to Mr. Jenison as almost certain that he need only state his case clearly in order to be assured of justice.

He has therefore petitioned the Legislature to pass an act repealing the Fort William Act of 1902, after Sec. 12 (Exhibit C); to re-enact Chapter 106, 60 Victoria (Exhibit A); and to re-enact Chapter 120, 62 Victoria (2) (Exhibit B), except as to the contracts therein scheduled, amending the last section so that he shall be clearly authorized to assign all of his rights; and so that his assignees, if such there should be, may develop at the falls to supply present demands for power without losing the right to carry the water across the country as soon as the greater demand may arise to justify it.

With such legislative relief he is satisfied that he can enlist the capital for immediate development, and this development would be a great public good.

Mr. Jenison's property, which has been taken away from him, was dearly purchased. To prove this, read Sec. 20 (Exhibit A). There the Legislature decreed that he should pay people for property they did not own. With that in mind, read Sec. 20 (Exhibit C), where the same law-making body decrees, *ex post facto*, that the town of Fort William shall not be liable to him; that he shall be paid for but a small part of his property; that the town may condemn more property than it needs; and that the new rights and privileges "shall supersede and have priority over those of the said Edward Spencer Jenison." Mr. Jenison had committed no crime; a false reason is alleged in the preamble of the act (Exhibit C); he had been guilty of no forfeiture; he could make none under the act in Exhibit A.

This is Mr. Jenison's case. Let any owner of property; let any explorer; let any engineer; let any financier—let any one put himself in Mr. Jenison's place, and has he received justice? And it is by no means his fault that the two towns had not long ago enjoyed the blessings of cheaper light, heat and power.

In Exhibit D, where contemptuous remarks are made, as if Mr. Jenison had expended no capital, the reader must not fail to understand that labor well done is capital, and besides Mr. Jenison's eight years of toil, he produced far more actual money and invested it more wisely and unselfishly in the needed water works than did the critics who, before the honorable members of the Committee, were so "wealthy" in their remarks. The parties in opposition to Mr. Jenison can by no means point to a good faith so clearly shown in performance as is disclosed in the career of Edward Spencer Jenison.

Therefore let it not be thought that Mr. Jenison acquired his lost rights and privileges without the exercise of all the qualities

of a pioneer projector and without heavy and continual expense. The business of exploration in an uninhabited country is one dangerous to life and limb, and many hard ups and sufferings fell to Jenison's lot. All he got he dearly earned—it was in no sense increment or usufruct. His labors, too, were for the public good, as well as his own, and he would have succeeded long ago but for the opposition of persons whose fidelity to the best interests of a new settlement could have no comparison to his own in work done, discoveries made and money spent. "By their fruits ye shall know them."

MOST RESPECTFULLY SUBMITTED.

The honorable legislators who are respectfully addressed in this Memorial are besought, in the name of justice, to clear away the cloud they have by misrepresentations been led to cast on and give back to Mr. Jenison the property so arbitrarily and causelessly taken from him. The harsh act was passed as a sort of rider; neither the caption nor the greater part of the preamble (Exhibit C) gave to legislators any reasonable opportunity to observe that large property interests were to be arbitrarily confiscated. When the first rehearing came the honorable legislators were erroneously informed by the victim's own advocate that the victim had shown bad faith. All this may be seen in Exhibit C. With adverse interests excellently represented before the Committee, relief was then withheld.

But this state of affairs, your orator prays, should not continue. The results of eight years of toil; the good-will of a lifetime; many thousands of dollars; the capital attaching to an unblemished name; the funds of trusting financial associates placed in his ca. have all been confiscated from your orator, Edward Spencer Jenison, and he respectfully submits that it cannot be good public policy so to do—nor would any body of legislators, if properly informed, take such action.

EXHIBIT "A"

CHAP. 106.—60 VICT.

An Act to enable Edward Spencer Jenison to develop and improve a Water Privilege on the Kaministiquia River.

Assented to 13th April, 1897.

Whereas Edward Spencer Jenison is the owner of a water privilege on the Kaministiquia River, in the District of Thunder Bay, situate between the southwest part of the Township of Oliver and part of the Township of Paipoonge on the east and southeast part of the Township of Conmee and part of the said Township of Paipoonge on the west, and for the purpose of developing and improving the said water privilege desires to divert a portion of the water of the said river from its natural channel, and to convey the same by means of a canal or trench across the chain reserve adjoining the said channel and through certain lands of which the said Edward Spencer Jenison is owner, and also through or across certain other lands, being mining location or lot No. 10 X in the said Township of Oliver, and from a point near the southerly side of the said mining location or lot No. 10 X by means of pipes or conduits to a part of lot No. 20 in concession D of the said Township of Paipoonge of which the said Edward Spencer Jenison is the owner; and whereas the said Edward Spencer Jenison has by contract or agreement obtained the right to flood and use for the purposes of his proposed undertaking the portion of lot A in the first concession of the said Township of Conmee which will be affected by the works he proposes to construct, and has caused surveys and levels to be taken and made of the lands sought to be taken, acquired, held, used or otherwise affected by the construction or for the purpose of the said undertaking, together with a map or plan thereof, and has caused the same to be filed in the office of the Clerk of the District Court of the District of Thunder Bay; and whereas the said Edward Spencer Jenison has by his petition prayed that an Act may be passed to enable him to develop and improve his said water privilege, and it will conduce to the public good, and is proper and just under all the circumstances of the case, to grant the prayer of the said petition;

Therefore Her Majesty by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. It shall be lawful for the said Edward Spencer Jenison, and he is hereby authorized and empowered, to erect and build a dam or weir in the Kaministiquia River opposite the westerly twelve and a half acres of lot No. 19 in the second concession of the Township of Oliver in the District of Thunder Bay at the head of the falls or rapids in the said river known as Ecarte Falls or Portage Tearte, to such height as may be necessary in order to raise the level of the water in the said river to the height of eight feet above its low water mark or level.

Authority to
erect a dam.

2. It shall be lawful for the said Edward Spencer Jenison, and he is hereby authorized and empowered, at a point opposite the said westerly twelve and a half acres of lot No. 19 in the second concession of the Township of Oliver aforesaid and above the dam or weir to be built as provided in the first section of this Act, to divert from the channel of the Kaministiquia River such part of the waters thereof as may from time to time exceed four thousand cubic feet passing the said point per minute

Authority to
divert waters.

3. It shall be lawful for the said Edward Spencer Jenison, and he is hereby authorized and empowered, to enter upon, take possession of, acquire, hold and use such portion of mining location . . . 10 X in the said Township of Oliver as the arbitrator may under the provisions of this Act award that he is entitled to expropriate, subject to the next section.

Authority to
expropriate
certain lands.

Valuation
by Judge.

4. The official arbitrator for the City of Toronto shall act as arbitrator and determine the value of such part of mining location or lot No. 10 X as aforesaid, subject to the provisions of this Act, and the damages, if any, which ought to be paid by the said Edward Spencer Jenison as compensation to the owners of the said land in the next preceding section mentioned, for any injury or damage done to them by the taking of such portion thereof as the arbitrator may determine, in case the said arbitrator shall determine that the said Jenison is entitled to expropriate any portion of said lot No. 10 X and upon payment of the amount so to be assessed, either to the owners of the said land or into the High Court of Justice for Ontario to their credit, the said lands which he may so expropriate shall become and be thenceforward vested in fee simple in the said Edward Spencer Jenison, his heirs and assigns forever.

Authority to
expropriate
highways.

5. It shall be lawful for the said Edward Spencer Jenison and he is hereby authorized and empowered, to enter upon, take possession of, acquire, hold and use such portions of the highway or road allowance between the said Township of Oliver and the said Township of Paipoonge, commencing at the distance of 300 feet west from the southeast angle of the said mining location or lot No. 10 X and extending in a westerly direction 400 feet therefrom, as he may require or deem expedient for the purposes of his said undertaking; provided, however, that should the said highway or road allowance be at any time hereafter required for use as a public highway or road the said Edward Spencer Jenison shall, upon demand of the Municipal Council of the said Townships or of either of them, at his own expense erect and maintain a proper bridge on the said highway or road allowance across and over the trench or canal, pipes or conduits mentioned in section 7 of this Act.

Authority to
expropriate
highways.

6. It shall be lawful for the said Edward Spencer Jenison, and he is hereby authorized and empowered, to enter upon, take possession of, acquire, hold and use such other portion of the public highways or road allowances, if any, in either the said Township of Oliver or the said Township of Paipoonge or the Township of Neebing, as may be required for the purposes of the said undertaking; provided, however, that should any such highways or road allowances be at any time hereafter required for use as public highways or roads the said Edward Spencer Jenison shall, upon demand of the Municipal Council of the Township in which any such highway or road allowance is situate, at his own expense erect and maintain proper bridges on the said highways or road allowances across and over the trench or canal, pipes or conduits mentioned in section 7 of this Act.

Authority to
convey water
across road
allowances
and over
certain lands.

7. It shall be lawful for the said Edward Spencer Jenison, and he is hereby authorized and empowered, to convey and conduct the water which may from time to time be diverted as aforesaid from the Kaministiquia River through, over and across the road allowance or reserve of one chain in width along the easterly bank of the said river at the point of diversion of the said water, and through, over and across the westerly twelve and a half acres of lot No. 19 in the second concession of the said Township of Oliver and those parts of lot No. 18 and of lot No. 19 in the first concession of the said Township of Oliver now owned by the said Edward Spencer Jenison; and through, over and across that part of mining location or lot No. 10 X in the Township of Oliver, which he shall be entitled to expropriate (if any) and across the 400 feet of unopened highway or road allowance between the said Townships of Oliver and Paipoonge, described in section 5 of this Act, and through, over and across the westerly ten acres of that part of lot No. 20 in concession D of the said Township of Paipoonge lying east of the Kaministiquia River; and through, over and across the said allowance or reserve of one chain in width along the easterly bank of the said river, between the last mentioned lot and the said river and to the channel of the said Kaministiquia River by means of a trench or canal and of pipes, conduits, development plant and tail races. Provided, always, that the said Edward Spencer Jenison shall at all times hereafter permit and allow at least four thousand cubic feet of water per minute to flow over the present natural channel of the said Kaministiquia River past any point in the said river between the point at which part of the waters thereof may be diverted therefrom as by this Act permitted.

and the point in the said river at which the said waters may be returned to the channel of the said river

8. It shall be lawful for the said Edward Spencer Jenison, and he is hereby authorized and empowered, to make and maintain above the dam or weir mentioned in section 1 of this Act a pond of the extent and dimensions of thirty-five acres in area upon that part of lot letter A in the first concession of the said Township of Conner which will be flooded by the erection of the said dam, and also upon the road allowance or reserve of one chain in width between the said land and the said river

Authority to make a pond.

9. It shall be lawful for the said Edward Spencer Jenison, and he is hereby authorized and empowered, to lower the bed of the Kaministiquia River at or near its outlets from Dog Lake or Great Dog Lake, and to erect and build therein at or near to the said outlets a dam or weir to the height of three feet above the low water mark hereinafter described, with proper gates and appliances to be used by the said Edward Spencer Jenison, to control the flow and level of the waters of the said lake between its low water level and three feet above its low water level, which said low water level is hereby declared to be the level of the low water mark at the north-eastern extremity of Stony Island in the said Lake, as set out in the report of Hume Blake Proudfoot, Ontario Land Surveyor, filed and of record in the Department of Crown Lands of the Province of Ontario, and the said Edward Spencer Jenison is hereby authorized and empowered to alter the level of the said lake from time to time by means of the said dam or weir, gates and appliances between the said low water mark and three feet above the same, thereby forming a storage reservoir from which the said Edward Spencer Jenison is hereby authorized and empowered to draw for the use of his said undertaking such stored or reserve waters, at such times, in such manner and in such quantities and places as may best serve his purposes aforesaid.

Authority to lower bed of Kaministiquia River and erect a dam.

10. It shall be lawful for the said Edward Spencer Jenison and he is hereby authorized and empowered, to lower the bed of the Mattawin River at its outlet from Lake Shebandowan, and to erect and build therein at or near to the outlet of the said River from Lake Shebandowan a dam or weir to the height of three feet above the low water mark hereinafter described, with proper gates and appliances, to be used by the said Edward Spencer Jenison to control the flow and level of the waters of the said Lake Shebandowan, between its low water level and three feet above its low water level which said low water level is hereby declared to be two feet and two inches below the level of the bottom of the sill of the storehouse on the Dawson Route as set out in the report of the said Hume Blake Proudfoot, filed and of record in the said Department of Crown Lands, and the said Edward Spencer Jenison is hereby authorized and empowered to alter the level of the said lake from time to time by means of the said dam or weir, gates and appliances between the said low water mark and three feet above the same, thereby forming a storage reservoir, from which the said Edward Spencer Jenison is hereby authorized and empowered to draw for the use of his said undertaking such stored or reserve waters at such times, in such manner and in such quantities and places as may best serve his purposes aforesaid

Authority to lower bed of Mattawin River and erect a dam.

11. It shall be lawful for the said Edward Spencer Jenison and he is hereby authorized and empowered, to withdraw from the said lakes the waters thereof stored as aforesaid, and conduct the said waters and allow the same to flow over the channels of the said Kaministiquia and Mattawin Rivers, at such times and in such quantities as may best serve his said purposes; provided, however, that except as authorized by Section 1 of this Act, and caused by the dam or weir therein described, the waters of the said rivers shall not be raised by the said Edward Spencer Jenison, above their high water marks or levels; and provided further that a sufficient amount of water shall be at all times allowed to flow down and over the channels of the said rivers to ensure a constant flow of at least four thousand cubic feet per minute in passing over Kakabeka Falls in the said Kaministiquia River.

Authority to withdraw waters from the lakes

Authority to
flood
ungranted
Crown land.

12. It shall be lawful for the said Edward Spencer Jenison and he is hereby authorized and empowered, to flood and, so far as may be requisite for his said purposes, to keep submerged such portions of the ungranted lands of the Crown on or near to the shores of the lakes herein mentioned as will be affected by raising the level of the said lakes to the extent authorized by this Act.

Navigation
not to be
interfered
with

13. Nothing herein contained shall authorize the said Edward Spencer Jenison to so construct, maintain or operate his said works, or any of them so that the navigation of the said Kaministiquia River shall be interfered with, or so that the passage of timber or logs floating down the same during high water shall be prevented; but the dams or weirs or other works to be constructed under the provisions of this Act shall be so built as to permit the free passage over or through the same of all timber or logs which it shall be lawful for any person to float down the said river during high water.

Rights with
respect to
Crown lands
subject to
control

14. The rights, powers and privileges hereby conferred upon the said Edward Spencer Jenison with reference to any of the Crown Lands of the Province of Ontario which may be affected by the said works shall be, as to such lands, subject in all respects to the terms of the contract or agreement entered into between the said Commissioner of Crown Lands for the Province of Ontario and the said Edward Spencer Jenison bearing date the 21st day of April, 1896.

Authority to
erect poles for
electricity.

15. It shall be lawful for the said Edward Spencer Jenison and he is hereby authorized and empowered, to erect lines of poles and wires for the purpose of transmitting electricity which may be generated by his said works over and upon any lands with the owners of which he may enter into any agreement to that end, or along, over and upon any public roads and highways, or across any of the waters within the said District of Thunder Bay, and to erect and maintain upon any such roads and highways or in any such waters the necessary fixtures, including posts, piers or abutments, for sustaining the cords or wires of such lines, provided the same are so constructed as not to interfere with the public use of such roads or highways or impede the free access to any house or other building erected in the vicinity of the same or interrupt the navigation of the said waters.

Terms to be
compiled with
before taking
any portion of
lot 10 X

16. Before the said Jenison shall be entitled to expropriate or take possession of any portion of said lot 10 X, the arbitrator shall determine whether sufficient horse power for the purpose of supplying electricity to the Towns of Fort William and Port Arthur and other purposes for which electric power will in his opinion be required, presently or within a reasonable period of time in the future, at or near the said Falls or the said Towns of Fort William and Port Arthur, or along the Kaministiquia River between said Towns and said Falls can be supplied by the said Jenison by the construction of electric works as aforesaid on the property owned by the said Jenison or which can be obtained by him at a reasonable price at or near Ecarte Rapids lying above said lot 10 X, and so that the waters taken shall be returned to said river before it reaches said lot 10 X, and in case the arbitrator determines that sufficient horse power can be obtained at or upon such last named locality then the said Jenison shall not be entitled to exercise any rights of expropriation in regard to lot 10 X aforesaid.

If arbitrator
finds that
sufficient
water power
cannot be
obtained at
Ecarte Falls

17. In the event of the arbitrator determining that sufficient water power cannot be obtained by the construction of the works at or near Ecarte Falls above said lot 10 X as aforesaid, then he shall by his award determine what part of the said lot 10 X and what quantity should be expropriated for the purpose of the works of the said Jenison, and the price to be paid therefor, and in so determining the arbitrator shall allot the part which, having regard to the purposes of the said Jenison's works, can be expropriated with the least damage to the said Ka-ka-be ka Falls Company.

18. Any damages awarded to any owner of the lands or other persons in connection with the expropriation by this Act authorized, or any damages which the Crown may suffer by reason of the flooding of any lands as mentioned in the said agreement, shall be a first lien and charge upon the lands, premises and works of the said Jenison, whether in his own hands or in the hands of any person to whom the same may be assigned.

Damages to be a charge on land mentioned in contract

19. In case the arbitrator determines that the said Jenison should be authorized to expropriate any portion of lot 10 X, he shall also determine and fix by his award the minimum quantity of water which shall at all times flow over the Falls, so as to protect as far as practicable the rights of the said company as owners of a water privilege on said River below that of said Jenison. And the said Jenison, his heirs and assigns, and all other parties interested, shall be bound by the determination and award of the said arbitrator.

Arbitrator to fix minimum quantity of water to flow over the falls.

20. In fixing the damages the arbitrator shall do so upon the basis that the said company has the right to use and carry the water over and across the strip of one chain in width along the banks of the river on the said lot No. 10 X, or that they are the owners of the water power or privilege on or connected with said lot No. 10 X subject to any encumbrances thereon.

Fixing damages matters to be considered

21. In the event of the arbitrator determining that the said electric works should be erected by the said Jenison at or near Ecarte Falls above lot 10 X, he shall further find and determine what benefit the said company will derive therefrom in case they use the said water, having regard to the quantity they could obtain without the additional works, and to the quantity they use in excess of such last mentioned quantity; and he shall fix the value to be paid by the said company for the use thereof when they shall so use the same, estimated either in bulk or horse power; and the said company shall pay to the said Jenison, his heirs or assigns, the sum so fixed either once a year or oftener as may be determined by the said award. And the said arbitrator shall, in arriving at a conclusion, further have regard to the cost of construction of the works and appliances for storing the waters of the lakes and river above said lot 10 X, and the use and right to use the said waters by the said Jenison, and to the fact that the works were or are to be constructed by Jenison primarily and principally for his own use, and such other facts and circumstances as to him shall seem meet and proper, and the arbitrator may be called upon to make and may make as many awards and at such times as may in his opinion be necessary to carry out the object and intent of this Act.

Other matters to be dealt with by arbitrator.

EXHIBIT "B"

CHAP. 120.—62 VICT. (2)

BILL.

An Act to amend the Act to enable Edward Spencer Jenison to develop and improve a Water Privilege on the Kaministiquia River and extend the provisions thereof.

Preamble.

Whereas by an Act passed in the 60th year of Her Majesty's reign and chaptered 106, certain powers were granted to Edward Spencer Jenison for the purposes and on the terms and conditions therein set forth; and whereas the said Edward Spencer Jenison by his petition has represented that pursuant to the said Act the Official Arbitrator for the City of Toronto has awarded and determined that power sufficient to supply the requirements mentioned in Section 16 of the said Act cannot be supplied by the said Jenison by the construction of electric works at or near Ecarte Rapids on the Kaministiquia River, as in the said section provided, and has further determined and fixed at 4,000 cubic feet per minute the minimum quantity of water which shall at all times flow over Kakabeka Falls on the said river; and whereas as the said Edward Spencer Jenison is by the said Act and the said award authorized and empowered to divert from the channel of the said river such part of the waters thereof as may from time to time exceed the said quantity, and it is represented that if the waters to be so diverted are conducted to a point in the Township of McIntyre, in the District of Thunder Bay, near the Towns of Port Arthur and Fort William, they can there be economically utilized to provide a gravitation system of water supply for the said towns and can by means of the greater head there obtainable be also utilized to greater advantage for the production of power; and whereas the said Edward Spencer Jenison by the said petition has prayed that an Act may be passed to enable him to carry out the work, and to enable him and the corporations of the said towns to enter into the agreements hereinafter mentioned; and whereas by-laws authorizing the corporations of the said towns to enter into agreements to take and utilize part of the said water and power supply have been read a first and second time and received the assent of the majority of the ratepayers of the said towns who voted thereon on the 2nd day of January, 1899, and the by-law of the Town of Fort William entitled "A by-law respecting waterworks, electric lighting and power and other services for municipal purposes" and numbered 195 was read a third time and finally passed on the 17th day of January, 1899, and the by-law of the Corporation of the Town of Port Arthur entitled "A by-law respecting waterworks, electric lighting and power and other services for municipal purposes" and numbered 526 was read a third time and finally passed on the 25th day of January, 1899, and in order to remove all doubts as to the validity of the said by-laws and agreements it is expedient to confirm the same and the corporations of the said towns approve of the said petition, and it will conduce to the public good and is proper and just under all the circumstances of the case to grant the prayer of the said petition:

Therefore Her Majesty by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows:

1. The powers conferred upon the said Edward Spencer Jenison by the said Act passed in the 60th year of Her Majesty's reign, chaptered 106, for the purposes therein set forth are hereby extended to and made applicable to the works hereinafter set forth, and the several clauses of the said Act conferring such powers are hereby incorporated with and made part of this Act, except only in so far as they may be inconsistent with the express enactments hereof.

2. It shall be lawful for the said Edward Spencer Jenison and he is hereby authorized and empowered, to convey and conduct such part of the waters of the Kaministiquia River as may from time to time exceed four

Incorporation
of provisions
of 60 Vict. c.
106 with this
Act.

Authority to
divert waters
of the river
into canal

thousand cubic feet per minute, from the channel of the said river opposite the westerly part of lot number 10 in the second concession of the Township of Oliver, through the Townships of Oliver, Paipoonge, Neebing, and McIntyre, and the Towns of Port Arthur and Fort William to Thunder Bay, Lake Superior, by means of a trench, canal, pipes, conduits, channels, reservoirs and raceways, and for the purpose of so doing to make and construct the requisite works across, under and over any railway, tramway, stream, watercourse or highway which it may be necessary to intersect or touch, and through, over, under and across any lands of which he may from time to time be the owner or which he may from time to time acquire from the owners thereof, and through, over, under and across such lands as he may be authorized to take, acquire, hold and use in the manner hereinafter set forth; provided, however, that the provisions of this section shall be deemed to apply only so far as the jurisdiction of the Legislative Assembly of the Province of Ontario extends.

3. It shall be lawful for the said Edward Spencer Jenison, and he is hereby authorized and empowered, to intercept and divert into the said canal, trench, pipes, conduits, channel, reservoirs and raceways any and all streams and watercourses that may be crossed by the said canal, trench, pipes, conduits, channels, reservoirs and raceways; provided, however, that after so doing he shall at all times permit and allow to flow from the said canal, trench, pipes, conduits, channels, reservoirs and raceways into the present natural channels of such intercepted streams and watercourses an amount of water that shall not be less than their present flow in seasons of low water; provided, however, that in the case of any power on any intercepted stream or water course being interfered with, the owner thereof shall be entitled to compensation to be determined as hereinafter provided.

Authority to divert waters of streams that canal crosses.

4. It shall be lawful for the said Edward Spencer Jenison, and he is hereby authorized and empowered to make and maintain dams and embankments, and to construct and maintain storage ponds and reservoirs and settling basins along the line of the said proposed canal, trench, pipes, conduits, channel and raceways, and to enlarge by widening and deepening the channels of any existing streams along the line of said tail races, and generally to construct, maintain and operate all, the works mentioned in the agreements contained in Schedules A and B to this Act and necessary to carry out and comply with the terms and provisions thereof.

Authority to make dams.

5. It shall be lawful for the said Edward Spencer Jenison and he is hereby authorized and empowered, from time to time, to enter upon, take possession of, acquire, hold and use such lands in the said townships and towns as may be necessary for the reasonable and economical construction, maintenance and operation of the said canal, trench, pipes, conduits, channels, raceways, ponds, reservoirs, basins, and other works whether as a site for the said works or any of them or for the purpose of obtaining therefrom stone, gravel, earth, sand and other materials required for the construction and maintenance of any of the said works; but the said Edward Spencer Jenison shall make full compensation for all lands so taken without the consent of the owners and the damage incidental to the taking thereof; and shall also make full compensation to the owners, occupiers or other persons interested in any lands that may be injuriously affected by the exercise of any of the additional powers conferred by this Act for any damages to said lands or estate or interest therein or rights or easements affecting the same resulting from the exercise of such additional powers.

Authority to expropriate lands.

(2) In determining the amount of the compensation for the lands of the said Jenison now located and occupied as right of way by the Ontario and Rainy River Railway Company (and damages, if any, arising by reason of said railway or the location and running thereof), the same shall be ascertained and fixed on the basis as if this Act had not been passed and shall in no way be affected by the passing of this Act. Provided that the third arbitrator provided for by Section 20 of *The Railway Act* shall in this case be the Official Arbitrator appointed under the provisions of the Act chaptered 227 of the Revised Statutes of Ontario, 1897.

6. The compensation to be paid as aforesaid shall be ascertained and determined in the manner provided by Section 20 of *The Railway Act of Ontario*, all the provisions of which section are hereby incorporated with

Manner of ascertaining compensation

Rev. Stat.
c. 307.

and made part of this Act; and the said Edward Spencer Jenison shall have the right for the purpose of constructing, maintaining and operating the said works to exercise the powers conferred by the said Section 20 upon any railway company to which the provisions of the said section may be applicable, and he shall be subject to all the liabilities imposed by the said section upon any such company and generally the several sub-sections of the said Section 20 shall be read as part of this Act with the several amendments necessary to make the same applicable to the said Edward Spencer Jenison and the said work instead of to a railway company or its railway.

By-Law of
Fort William
confirmed.

7. The said by-law of the Corporation of the Town of Fort William entitled "A by-law respecting waterworks, electric lighting and power and other services for municipal purposes," and being By-law No. 195 (as set forth in Schedule A hereto), is hereby legalized and confirmed; and the council of the said corporation is hereby declared to have full power and authority to enter into the agreement in the said by-law referred to and contained in the said Schedule A hereto; and the said agreement shall be valid and binding in all respects upon the parties thereto and upon all other parties interested therein, notwithstanding anything to the contrary in *The Municipal Act* contained.

Rev. Stat.
c. 223.

By-Law of
Port Arthur
confirmed.

8. The said by-law of the Corporation of the Town of Port Arthur entitled "A by-law respecting waterworks, electric lighting and power and other services for municipal purposes," and being By-law No. 526 (as set forth in Schedule B hereto), is hereby legalized and confirmed, and the council of the said corporation is hereby declared to have full power and authority to enter into the agreement in the said by-law referred to (and contained in the said Schedule B hereto); and the said agreement shall be valid and binding in all respects upon the parties thereto and upon all other parties interested therein, notwithstanding anything to the contrary in *The Municipal Act* contained.

Rev. Stat.
c. 223.

Arbitration
in case of
disputes.

9. In the event of any difference arising as to the construction of the said agreements or as to any matter or thing to be done or performed under their terms, such difference shall be determined, if either of the said corporations so require, by arbitrators to be appointed under and as provided by the terms of *The Municipal Act*.

Right of
towns to pro-
duce electrical
power etc.

10. Notwithstanding any provision contained in the said agreements, the corporations of the Town of Port Arthur and Fort William shall have the right to develop and produce electrical and other power, and may use, sell and lease the power so produced for any purposes whatsoever.

Indemnifica-
tion of corpora-
tions against
damages
caused by
works.

11. The said Edward Spencer Jenison shall indemnify and save harmless the said corporations at all times from all loss, damage, costs, charges and expenses of every nature and kind whatsoever which the corporations may incur, be put to or have to pay by reason of the exercise by the said Edward Spencer Jenison of the powers conferred by this Act or by the said agreements or any of them, or by reason of neglect by the said Edward Spencer Jenison in the execution of the said works, or any of them, or by reason of the improper or imperfect execution of the works or any of them, or by reason of the said works becoming unsafe or out of repair, or by reason of the neglect, failure or omission of the said Edward Spencer Jenison to do or permit anything herein agreed to be done or permitted, or by reason of any act, default or omission of the said Edward Spencer Jenison or otherwise howsoever, and should the corporations, or either of them, incur, pay or be put to any such loss, damage, costs, charges or expenses, the said Edward Spencer Jenison shall forthwith upon demand repay the same to the corporations.

Act to bind
representa-
tives of
Jenison.

12. All the provisions of this Act, and of the said agreement, shall be binding upon the executors, administrators and assigns of the said Edward Spencer Jenison, and upon any bondholders, liquidator, receiver, corporation or person who may hereafter control or manage the said works, and all such persons and corporations shall at all times be bound to carry out the stipulations and provisions of this Act and of the said agreements.

13. In the event of the said Jenison at any time ceasing to operate the said works so as to fully comply with the terms of the said agreements, then the corporations of the Towns of Port Arthur and Fort William, or either of them, may, after thirty days' notice requiring the said Jenison to comply with the said agreements and his failure to do so, take over such of the said works and supply of water as may be necessary to fulfil all the conditions of the said agreements, at a value to be determined by arbitration under the provisions of *The Municipal Act*, and in the event of any differences at any time arising between the corporations of the Towns of Port Arthur and Fort William as to any matter or thing to be done in taking such proceedings, or as to the manner of dealing with or the management of the said works and supply of water so taken over such differences as they from time to time arise shall be determined by arbitration under the provisions of *The Municipal Act*, or, if the parties so agree, by the Official Arbitrator of the City of Toronto, whose decision shall be final and without appeal.

Right of towns to take over the works

14. The said Edward Spencer Jenison, and his assigns and his customers and lessees shall not have the right to sell, lease or otherwise dispose of or supply electric light or water or power to generate electric light for any municipal, domestic or commercial purposes in the municipalities of Fort William and Port Arthur during the existence of the said agreements.

Jenison not to sell or lease water, light or power while agreement extends

15. Notwithstanding anything to the contrary in the agreements to the schedules to this Act contained, the only exemption from taxes in either of the municipalities of Fort William or Port Arthur shall be of the works to be constructed by the said Edward Spencer Jenison under the agreement to the schedules to this Act which are necessary for the development and distribution in the said municipalities of power and light.

Exemption of works from taxation.

16. The construction of the said works shall be commenced within a period of six months from the passing of this Act and shall be completed within three years from the time fixed as aforesaid for commencement or within such further time as may be granted by the Lieutenant-Governor in Council, so as to have ready and available for use hydraulic capacity for at least ten thousand horse power.

Time of commencement and completion

SCHEDULE A.

TOWN OF FORT WILLIAM.—No. 1905.

A By-law Respecting Waterworks, Electric Lighting and Power and Other Services of Municipal Purposes.

The council of the corporation of the Town of Fort William enacts as follows:

1. The mayor and clerk are authorized and empowered on behalf of this corporation to execute the agreement between the corporation of the Town of Fort William and Edward Spencer Jenison, a draft of which is hereunto attached, marked as "Schedule A" to this by-law, and which schedule is made a part of this by-law to be read herewith after the same shall have received the assent of the electors and ratepayers as required by law.

2. The votes of the electors, being the qualified ratepayers of the Town of Fort William entitled to vote upon this by-law, will be taken on this by-law by the clerk of the corporation of the Town of Fort William, the returning officer in that behalf, by and through the several deputy returning officers hereinafter named, on Monday, the second day of January, A. D. 1899, commencing at nine o'clock in the morning when the poll shall be opened, and continuing until five o'clock in the afternoon of that day and no longer, at the several under mentioned places in the Town of Fort William, namely:

In the First Ward—At J. W. Robertson's house at the corner of McTavish and McGillivray streets, by Mr. J. W. Robertson, of Fort William, as deputy returning officer for that ward.

In the Second Ward—At the Town Hall, corner of Donald and Brodie streets, by Mr. J. J. Wells, of Fort William, as deputy returning officer for that ward.

In the Third Ward—At S. Stevenson's photograph gallery, corner of Ridge-way street and Syndicate avenue, by Mr. John McNee, of Fort William, as deputy returning officer for that ward.

In the Fourth Ward—At the Court House, West Fort William, by Mr. A. H. Wilson, of Fort William, as deputy returning officer for that ward.

On Saturday, the 31st day of December, A. D. 1898, at his office in the Council Council, on Donald street, in Fort William, at eleven o'clock in the forenoon, the mayor shall in writing signed by him appoint two persons to attend at the final summing up of the votes by the clerk of this corporation and one person to attend at each polling place on behalf of the persons interested in and desirous of promoting the passing of this by-law, and a like number on behalf of the persons interested in and desirous of opposing the passing of this by-law respectively.

The said clerk shall attend at the Council Chamber on Donald street at Fort William at noon on Tuesday, the 3rd day of January, 1899, to sum up the number of votes given for and against this by-law, and at the same time and place in the presence of the persons authorized to attend or of such of them as may be present shall then and there declare the results and forthwith certify to the council of this municipality under his hand whether the majority being duly qualified ratepayers in that behalf voting upon this by-law have approved or disapproved thereof.

15th day of November, 1898.

(Sgd.) C. W. JARVIS,
Mayor,

(Sgd.) E. S. RUTLEDGE,
Clerk.

SCHEDULE A TO BY-LAW 195.

AGREEMENT made in duplicate this

day of
A. D. 1899, between the Corporation of the Town of Fort William,
hereinafter called the corporation of the first part; and Edward
Spencer Jenison, of the City of Chicago, in the State of Illinois, one
of the United States of America, engineer, hereinafter called the con-
tractor, of the second part.

Whereas the contractor has acquired certain powers and rights in connection with the waters of the Kaministiquia River and other waters in the District of Thunder Bay, and the corporation desires to enter into this agreement for the purposes hereinafter set forth.

Now, therefore, it is witnessed that the corporation and the contractor do hereby mutually agree and covenant with each other as follows, that is to say:

1. The contractor shall and will, subject to the conditions hereinafter mentioned, within three years from the first day of January, 1899, construct and complete, or cause to be constructed and completed, the works necessary to furnish and supply to the corporation a water supply sufficient and ample in all respects to meet the requirements of the corporation from time to time for all municipal and domestic purposes, and to supply seven hundred and fifty (750) horse power of electric power or energy to operate the lighting and heating systems owned and operated by the corporation (including both alternating and direct currents suited to the lighting systems now in use or that may hereafter be in use in the said town) and for the other purposes hereinafter set forth; and further, the contractor shall within the said period provide a water supply on the high lands adjacent to the said Town of Fort William sufficient to produce ten thousand horse power.

2. The said water supply shall be drawn from the Kaministiquia river at a point above the falls known as Kakabeka Falls, and from the streams

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and creeks between the said points and the town of Fort William, and shall be free from such impurities as will unfit it for domestic use according to the certificate of the analyst of the Dominion Government, and the said water supply, as well as the electric current for the said seven hundred and fifty horse power, shall be delivered and supplied to the corporation at the northwest corner of Lot Number Five in the Fourth Concession in the township of Neebing (now part of the said town of Fort William).

3. The water to be so supplied now or at any future time shall be delivered in such a manner that it shall have a head of not less than two hundred and fifty to three hundred feet above the level of Lake Superior available for use, and shall be delivered to the point above named through a pipe one size larger than the corporation uses to take the water away therefrom.

4. The quantity of the said water supply is not, except upon the terms and conditions hereinafter set forth, to exceed two hundred and fifty millions (250,000,000) of gallons per year, and the electric power or energy to be supplied as aforesaid is not, except upon the terms and conditions hereinafter set forth, to exceed seven hundred and fifty (750) horse power.

5. The corporation shall have the right to make use of the water to be so supplied as aforesaid as well as of the additional quantity to be supplied on the terms and conditions hereinafter contained for all the said municipal and domestic purposes, which are hereby declared to include the furnishing of a water supply to any railway company doing business in the said town of Fort William; provided, however, and it is hereby expressly stipulated and agreed, that the corporation shall not take, and the contractor shall not be bound to supply or deliver, any water to be used by the corporation for the purpose of making power or energy of any kind for any purpose, or any water to be sold, disposed of, furnished or delivered to customers or consumers for use in the manufacture of power or energy of any kind or for any other hydraulic or manufacturing purpose.

6. The corporation shall have the right to make use of the said seven hundred and fifty horse power of electric power or energy as well as of the additional power or energy to be supplied on the terms and conditions hereinafter contained during the whole twenty-four hours of every day for all municipal purposes for which such power or energy may be required by the corporation, including the operation of the lighting and heating systems owned by it so long as the same shall continue to be owned by the corporation, but no longer; and it is hereby expressly stipulated and agreed that the corporation shall not take, and the contractor shall not be bound to supply or deliver, any electric power or energy to be used by the corporation for any other purpose than those hereinbefore mentioned, except as set forth in paragraph number seven (7) of this agreement.

7. During a term of five years commencing from the completion of the said work, but no longer, the corporation shall have the right to sell, lease or otherwise dispose of to consumers or customers other than the Canadian Pacific Railway Company, within the said town of Fort William, any surplus power or energy supplied to it as aforesaid, over and above that which may be required by the corporation to properly and efficiently operate its electric lighting and heating system and fully supply the demands and requirements of the public in respect thereof; and further, after the expiration of the said term of five years, when the right of the corporation to sell, lease or otherwise dispose of surplus power or energy as aforesaid shall have ceased, the corporation shall have the right from time to time to alter the respective quantities of water and of electric power or energy to be supplied to it as aforesaid by exchanging the surplus water, to which it may from time to time be entitled as aforesaid, over and above its requirements, for electric power or energy, or by exchanging for water the surplus electric power or energy to which it may from time to time be entitled as aforesaid, over and

above its said requirements; and such exchanges, if any, shall be effected on the basis of each single horse power of electric power or energy for one year, being equal in value to one million gallons of water; provided, however, that before effecting any such exchange, the corporation shall give to the contractor twenty days' notice in writing of its desire to do so and of the respective amounts of water and of power or energy required by it, and that such notice shall be binding and conclusive as to the respective amounts of water and of power or energy to be thereafter delivered.

8. Before the completion of the said works the contractor shall give to the corporation notice in writing specifying the date at which he expects to have the same completed and ready for occupation, and such notice, if given between the first day of November in any year and the first day of May next ensuing, shall be for a period of six months commencing from such first day of May, and if given between the first day of May in any year and the first day of November next ensuing, it shall be for a period of twelve months commencing from the said first day of November, but no penalty or damages shall be recoverable from the contractor for failure to complete the said works according to or at the time named in such notice, and the parties hereto may by mutual agreement change and alter the stipulations and agreements contained in this paragraph as to such notice.

9. Upon the completion of the works necessary to provide the said water and power supply, and from and after the date of such completion, and yearly and every year thereafter during the currency of this agreement, the corporation shall pay to the contractor, his heirs, executors, administrators or assigns, the sum of ten thousand dollars (\$10,000) per year in four equal quarterly payments of two thousand five hundred dollars (\$2,500) each, the first of which shall become due and be paid at the expiration of three months from the completion of the said works and the completion of the term of notice to the corporation hereinbefore provided for, and the subsequent payments of which shall become due and be paid at the expiration of each and every period of three months next ensuing after the date fixed as aforesaid for the said first payment; provided however, that if after making due efforts the corporation shall upon the completion of said works be unable to receive the said water and power supply then the corporation shall not until it shall be in a position to receive the same be called upon to commence making the said payments before the expiration of the time within which the contractor is hereby bound as aforesaid to complete his said work.

10. The contractor shall furnish and deliver to the corporation from time to time all the water required by it for the purposes for which water is to be supplied to it as aforesaid, over and above the said quantity of two hundred and fifty millions of gallons per year, and also all the electric power or energy required to operate its electric lighting and heating systems and for all the other purposes hereinbefore mentioned over and above the said seven hundred and fifty horse power to the full extent of the capacity of the works which the contractor is now, or shall hereafter be, authorized and empowered to construct and shall from time to time and at all times, upon receipt of proper and reasonable notice of the corporation's increased requirements of water or electric power or energy, and so far as he is authorized to do so, construct the works necessary to meet such additional requirements, and the corporation shall have the right from time to time and at all times to take and use the water and electric power or energy required by it for any of the purposes for which water and electric power or energy are to be supplied to it as aforesaid, to the full extent of the capacity of the contractor's works, provided, however, that the agreements and stipulations contained in this paragraph shall be subject to the terms and conditions set forth in paragraphs number eleven (11) twelve (12) and thirteen (13) of this agreement.

11. When and as often as the quantity of water supplied and delivered to the corporation as aforesaid shall exceed sixty-two million five hundred thousand (62,500,000) gallons for any of the said periods of three months,

the corporation shall pay to the contractor, his heirs, executors, administrators or assigns, one cent for each one thousand gallons of such excess, and the same shall become due and be paid quarterly on the second of the said quarter days next ensuing after the completion of the period of three months during which such excess may occur; provided, however, that if at the end of any year (to be reckoned from the date of the completion of the said works as aforesaid or some date to be mutually agreed upon between the parties hereto), the amount of water supplied during such year to the corporation shall not have exceeded two hundred and fifty millions of gallons altogether, the corporation shall have the right to deduct from the last of its payments for such year any sum or sums which it may have already paid for water supplied to it in any three months of such year in excess of sixty-two million five hundred thousand (62,500,000) gallons.

12. When and as often as the amount of electric power or energy supplied and delivered to and taken by the corporation as aforesaid shall exceed seven hundred and fifty horse power, the corporation shall pay to the contractor, his heirs, executors, administrators or assigns, the sum of twenty-five (\$25.00) dollars per year for each horse power of such excess, and the same shall become due and be paid quarterly on the second of the said quarter days next ensuing after the completion of the period of three months during which such excess may occur.

13. The Contractor shall not be obliged or compelled, notwithstanding anything contained in paragraph number ten (10) hereof, to supply or deliver to the corporation any quantity of water in excess of the said quantity of two hundred and fifty millions of gallons per year, or any amount of electric power, or energy in excess of seven hundred and fifty horse power, except to the extent to which the contractor can supply and deliver such excess, after supplying and delivering to other customers or consumers with whom he may from time to time have contracts or agreements, the water or power required by them under such contracts or agreements for manufacturing, hydraulic or other purposes for which the contractors shall have authority to supply or deliver water or power or energy; but the contractor shall not at any time after the receipt of notice of the corporation's increased requirements of water or power, as provided in paragraph number ten (10) hereof, make or enter into any new contract or agreement with any consumer or customer for the supply or delivery of either water or power, if the fulfillment of such contract or agreement may prevent the contractor from supplying and delivering to the corporation the additional amounts of water or power required by it under paragraph number ten (10) hereof.

14. Should the payments or any part of the payments to be made under this agreement remain overdue and unpaid for a period of ninety (90) days from the days and times on which they shall respectively become due and payable, the contractor shall thereupon be at liberty to shut off the supply of water and electric power or energy contemplated by this agreement and cease to supply and deliver any water or electric power or energy or either of them to the Corporation until all moneys due under this agreement shall have been fully paid and satisfied.

15. The contractor shall be considered to have supplied to the corporation, and the corporation shall be considered to have supplied to customers or consumers, electric power or energy to the full capacity of any motor or other appliance or set of appliances with which either the contractor or the corporation may connect a conductor of electric power or energy when and so long as the electric current supplied to such conductor is of sufficient capacity to operate such motor or other appliance or set of appliances, whether the same be used during only part or the whole of the time thereafter, but no extra charge for power shall be made to the corporation until the gross amount of electric power or energy supplied to the different motors or other appliances of the corporation or its customers or consumers shall exceed seven hundred and fifty horse power.

16. The contractor shall have the right to sell, lease or otherwise dispose of and to deliver water derived from the sources above named for

manufacturing or hydraulic purposes of all kinds, and for all other purposes for which water is not to be supplied to the corporation as aforesaid within the limits of the said Town of Fort William, and also to sell, lease or otherwise dispose of and to deliver mechanical, electrical and hydraulic power and energy, electricity, compressed air, and power and energy in any other more condensed form derived from the sources above named that may from time to time be in use, and for the purpose of so doing to convey and conduct such water, mechanical, electrical and hydraulic power and energy, electricity, compressed air, and power and energy in any other more condensed form by three separate routes in as direct a manner as practicable, through, along, under and over the streets, highways and public places of the corporation on such routes and no others unless mutually agreed upon, by means of pipes, mains, wires, poles and conduits and other approved methods that may from time to time be in use for such purposes; provided, however, that in so doing the contractor shall interfere as little as possible with the existing pavements, sewers, water-mains, pipes and wire and pole lines of the corporation, and shall construct and operate the said works in a proper and workmanlike manner and under competent supervision and in such a way as to interfere with and interrupt as little as possible the public use of such streets, highways and public places; and provided further that the contractors shall give to the corporation twenty days' notice in writing before entering upon any of the streets, highways or public places of the corporation for the purpose of constructing any of the said works or making repairs or alterations therein, and that the said works shall be constructed, and all repairs and alterations hereto shall be executed in a manner approved of by the Town Engineer as least calculated to interfere with the public use of such streets, highways and public places, and that upon the completion of any of the said works or repairs or alterations, the said streets, highways and public places, shall be restored as nearly as possible to their original condition to the satisfaction of the said Town Engineer; and provided also that the contractor shall indemnify and save harmless the corporation from all damages properly recoverable against it by reason of anything done by the contractor under the provisions of this paragraph.

17. Should the corporation at any time do away with all its wires and pole lines either throughout the whole of the said town or throughout any particular areas or sections of it in which the congestion of business or traffic may make such a course necessary, the contractor shall also upon receipt of reasonable notice, remove his wire and pole lines from above the surface of the said streets, highways and public places within the same areas or sections.

18. The works to be constructed by the contractor under this agreement (including those mentioned in paragraph 16 thereof) and all the property whether real or personal, used or occupied in connection therewith, shall during the currency of this agreement be exempt from all taxes and assessments of every kind except only school taxes, and local improvement rates.

19. This agreement shall remain in force until the first day of January, 1932.

20. This agreement and all the terms and provisions hereof shall be in all respects binding upon, and shall enure to the benefit of the heirs, executors, administrators and assigns of the contractor and the successors and assigns of the corporation, and the contractor shall have the right at any time to sell, lease, assign, transfer and set over this agreement and all his rights, powers and privileges hereunder to any company or corporation that may be formed for the purpose of carrying out the undertaking or works contemplated by this agreement or any part of such undertaking or works, and upon notification to the corporation of such assignment or transfer this agreement and all the rights, powers and privileges hereby granted to the contractor shall at once become vested in and exercisable by the said company or corporation to be formed as aforesaid in the same way to all intents and purposes and to the same extent as if the name of

such company or corporation were substituted for that of the contractor in this agreement.

21. Time shall be of the essence of this agreement, and this agreement shall be altogether null and void if the contractor shall not within three years from the first day of January, 1899, have completed the works specified in paragraph number one (1) hereof.

In witness whereof the seal of the corporation under the hands of its mayor and clerk has been hereunto affixed and the contractor has hereunto set his hand and seal.

Signed, sealed and delivered in the presence of

SCHEDULE B

TOWN OF PORT ARTHUR.—No. 521

A By-law Respecting Waterworks, Electric Lighting and Power and Other Services for Municipal Purposes.

The council of the corporation of the town of Port Arthur enacts as follows:—

1. The mayor is empowered on behalf of this corporation to execute the contract between the corporation of the town of Port Arthur and Edward Spencer Jenison, a draft of which is hereto attached, marked as Schedule "A" to this by-law, and which schedule is made a part of this by-law to read therewith after the same shall have received the assent of the electors and ratepayers as required by law.

2. The votes of the electors, being the qualified ratepayers of the town of Port Arthur entitled to vote upon this by-law, will be taken on this by-law by the clerk of the corporation of the town of Port Arthur, the returning officer in that behalf, by and through the several deputy returning officers hereinafter named, on Monday the second day of January, A. D. 1899, commencing at nine o'clock in the morning, when the poll shall be opened, and continuing open until five o'clock in the afternoon of that day and no longer, at the several undermentioned places in the town of Port Arthur, namely:—

In the first ward, at the council chamber on Park street in the said town, by Mr. Neil McDougall of Port Arthur as deputy returning officer for that ward.

In the second ward, at lot 5, west side of Cumberland street, by Mr. W. A. McCallum of Port Arthur as deputy returning officer for that ward, and

In the third ward, at the Continental Hotel building on Cumberland street in the said town, by Mr. John Munro of Port Arthur as deputy returning officer for that ward.

3. On Friday, the 30th day of December, A. D. 1898, at his office in the council chamber on Park street in Port Arthur, at eleven o'clock in the forenoon, the mayor shall in writing signed by him appoint two persons to attend at the final summing up of the votes by the clerk of this corporation and one person to attend at each polling place on behalf of the persons interested in and desirous of promoting the passing of this by-law and a like number on behalf of the persons interested in and desirous of opposing the passing of this by-law respectively.

4. The said clerk shall attend at the council chamber on Park street at Port Arthur at noon on Wednesday the 4th day of January, 1899, to sum up the number of votes given for and against this by-law, and at the same time and place, in the presence of the persons authorized to attend, or

such of them as may be present, and then and there declare the result and forthwith certify to the council of this municipality under his hand whether the majority of the electors, being the duly qualified ratepayers in that behalf voting upon this by-law, have approved or disapproved thereof

Council Chamber, Port Arthur, 25th day of January, 1899.

GEORGE T. MARKS,
Mayor
T. McTEIGLE,
Clerk.

SCHEDULE "A" TO BY-LAW No 526

AGREEMENT made in duplicate this day of A. D., 1899,
between the corporation of the Town of Port Arthur, hereinafter called the corporation, of the first part, and Edward Spencer Jenison, of the City of Chicago, in the State of Illinois, one of the United States of America, engineer, hereinafter called the contractor, of the second part.

Whereas the contractor has acquired certain powers and rights in connection with the waters of the Kaministiquia River, and other waters in the district of Thunder Bay, and the corporation desires to enter into this agreement for the purposes hereinafter set forth:

Now, therefore, it is witnessed that the corporation and the contractor do hereby mutually agree and covenant with each other as follows, that is to say:

1. The contractor shall and will, subject to the conditions hereinafter mentioned, within three years from the first day of January, 1899, construct and complete, or cause to be constructed and completed, the works necessary to furnish and supply to the corporation a water supply sufficient and ample in all respects to meet the requirements of the corporation from time to time for all municipal and domestic purposes, and to supply seven hundred and fifty (750) horse power of electric power or energy to operate the electric railway, lighting and heating systems owned and operated by the corporation and for the other purposes hereinafter set forth, and further, the contractor shall, within the said period, provide a water supply on the high lands adjacent to the said town of Port Arthur sufficient to produce ten thousand horse power.
2. The said water supply shall be drawn from the Kaministiquia River at a point above the falls known as Kakabeka Falls, and from the streams and creeks between the said point and the Town of Port Arthur, and shall be free from such impurities as will unfit it for domestic use, according to the certificate of the analyst of the Dominion Government, and the said water supply as well as the electric current of the said seven hundred and fifty (750) horse power; shall be delivered and supplied to the corporation at any point or points east of the McIntyre River, and within a distance of two miles from the intersection of Cumberland and Arthur streets in the said town, to be selected by the contractor.
3. The water to be supplied now or at any future time shall be delivered in such a manner that it will have a head of not less than from two hundred and fifty to three hundred feet above the level of Lake Superior available for use and shall be delivered to the points above named through a pipe one size larger than the corporation used to take the water away therefrom.
4. The quantity of the said water supply is not, except upon the terms and conditions hereinafter set forth, to exceed two hundred and fifty millions (250,000,000) of gallons per year, and the electric power or energy to be supplied as aforesaid, is not, except upon the terms and conditions hereinafter set forth, to exceed seven hundred and fifty (750) horse power.
5. The corporation shall have the right to make use of the water to be so supplied as aforesaid, as well as of the additional quantity to be supplied on the terms and conditions hereinafter contained, for all the said

municipal and domestic purposes, which are hereby declared to include the furnishing of a water supply to any railway company doing business in the said Town of Port Arthur, provided, however, and it is hereby expressly stipulated and agreed, that the corporation shall not take, and the contractor shall not be bound to supply or deliver, any water to be used by the corporation for the purpose of making power or energy of any kind for any purpose, or any water to be sold, disposed of, furnished or delivered to customers or consumers, for use in the manufacture of power or energy of any kind, or for any other hydraulic or manufacturing purpose.

6. The corporation shall have the right to make use of the said seven hundred and fifty (750) horse power of electric power or energy as well as of the additional power or energy to be supplied on the terms and conditions hereinafter contained, during the whole twenty-four hours of every day for all municipal purposes for which such power or energy may be required by the corporation, including the operation of the electric railway, lighting and heating systems owned and operated by it, so long as the same shall continue to be owned and operated by the corporation, but no longer; and it is hereby expressly stipulated and agreed that the corporation shall not take and the contractor shall not be bound to supply or deliver, any electric power or energy to be used by the corporation for any other purpose than those hereinafter mentioned, except as set forth in paragraph number seven (7) of this agreement.

7. During a term of five years, commencing from the completion of the said works, but no longer, the corporation shall have the right to sell, lease, or otherwise dispose of to consumers, or customers within the said Town of Port Arthur, any surplus electric power or energy supplied to it as aforesaid over and above that which may be required by the corporation to properly and efficiently operate its electric railway, lighting and heating systems and fully supply the demands and requirements of the public in respect thereof, and further, after the expiration of the said term of five years, when the right of the corporation to sell, lease, or otherwise dispose of surplus power or energy, as aforesaid, shall have ceased, the corporation shall have the right from time to time to alter the respective quantities of water and of electric power or energy to be supplied to it as aforesaid, by exchanging the surplus water to which it may be entitled as aforesaid over and above its requirements, for electric power or energy, or by exchanging for water the surplus electric power or energy to which it may from time to time be entitled as aforesaid over and above its said requirements, and such exchanges, if any, shall be effected on the basis of each single horse power of electric power or energy being equal in value to one million gallons of water, provided, however, that before effecting any such exchange the corporation shall give to the contractor twenty days' notice in writing of its desire to do so, and of the respective amounts of water and of power or energy required by it, and that such notice shall be binding and conclusive as to the respective amounts of water and of power or energy to be thereafter delivered.

8. Before the completion of the said works the contractor shall give to the corporation notice in writing specifying the date at which he expects to have the same completed and ready for operation, and such notice, if given between the first day of November in any year and the first day of May next ensuing, shall be for a period of six months commencing from such first day of May, and if given between the first day of May in any year and the first day of November next ensuing, it shall be for a period of twelve months, commencing from the said first day of November, but no penalty or damages shall be recoverable from the contractor for failure to complete the said works according to or at the time named in such notice, and the parties hereto may by mutual agreement change and alter the stipulations and agreements contained in this paragraph as to such notice.

9. Upon the completion of the works necessary to provide the said water and power supply, and from and after the date of such completion, and yearly and every year thereafter during the currency of this agree-

ment the corporation shall pay to the contractor, his heirs, executors, administrators or assigns, the sum of ten thousand (\$10,000) dollars per year, in four equal quarterly payments of two thousand five hundred (\$2,500) dollars each, the first of which shall become due and be paid at the expiration of three months from the completion of said works and the completion of the term of notice to the corporation hereinbefore provided for, and the subsequent payments of which shall become due and be paid at the expiration of each and every period of three months next ensuing after the date fixed as aforesaid for the said first payment; provided, however, that if after making due efforts the corporation shall upon the completion of the said works be unable to receive the said water and power supply then the corporation shall not until it shall be in a position to receive the same be called upon to commence making the said payments before the expiration of the time within which the contractor is hereby bound as aforesaid to complete his said works.

10. The contractor shall furnish and deliver to the corporation from time to time all the water required by it for the purpose for which water is to be supplied to it as aforesaid over and above the said quantity of two hundred and fifty millions of gallons per year and also all the electric power or energy required by it to operate its electric railway, lighting and heating systems and for all other purposes hereinbefore mentioned over and above the said seven hundred and fifty horse power, to the full extent of the capacity of the works which the contractor is now, or shall hereafter be, authorized and empowered to construct, and shall from time to time and at all times, upon receipt of proper and reasonable notice of the corporation's increased requirements of water or electric power or energy, and so far as he is authorized to do so, construct the works necessary to meet such additional requirements, and the corporation shall have the right from time to time and at all times to take and use the water and electric power or energy required by it for any of the purposes for which water and electric power or energy are to be supplied to it as aforesaid, to the full extent of the capacity of the contractor's works, provided, however, that the agreements and stipulations contained in this paragraph shall be subject to the terms and conditions set forth in paragraphs number eleven (11), twelve (12) and thirteen (13) of this agreement.

11. When and as often as the quantity of water supplied and delivered to the corporation as aforesaid shall exceed sixty-two million, five hundred thousand (62,500,000) of gallons for any of the said periods of three months, the corporation shall pay to the contractor, his heirs, executors, administrators or assigns, one cent for each one thousand gallons of such excess and the same shall become due and be paid quarterly on the second of the said quarter days next ensuing after the completion of the period of three months during which such excess may occur; provided, however, that if at the end of any year (to be reckoned from the date of the completion of the said works as aforesaid or some date to be mutually agreed upon between the parties hereto) the amount of water supplied during such year to the corporation shall not have exceeded two hundred and fifty millions of gallons altogether, the corporation shall have the right to deduct from the last of its payments for such year any sum or sums which it may have already paid for water supplied to it in any three months of such year in excess of sixty-two million five hundred thousand (62,500,000) gallons.

12. When and as often as the amount of electric power or energy supplied and delivered to and taken by the corporation as aforesaid shall exceed seven hundred and fifty horse power the corporation shall pay to the contractor, his heirs, executors, administrators or assigns, the sum of twenty-five dollars (\$25.00) per year for each horse power of such excess, and the same shall become due and be paid quarterly on the second of the said quarter days next ensuing after the completion of the period of three months during which such excess may occur.

13. The contractor shall not be obliged or compelled, notwithstanding anything contained in paragraph number ten (10) hereof, to supply or deliver to the corporation any quantity of water in excess of the said quantity of two hundred and fifty millions of gallons per year or any amount

of electric power or energy in excess of seven hundred and fifty horse power, except to the extent to which the contractor can supply and deliver such excess, after supplying and delivering to other customers or consumers with whom he may from time to time have contracts or agreements, the water or power required by them under such contracts or agreements for manufacturing, hydraulic or other purposes for which the contractor shall have authority to supply or deliver water or power or energy; but the contractor shall not at any time after the receipt of notice of the corporation's increased requirements of water or power, as provided in paragraph number (10) hereof, make or enter into any new contract or agreement with any consumer or customer for the supply or delivery of either water or power if the fulfillment of such contract or agreement may prevent the contractor from supplying and delivering to the corporation the additional amounts of water or power required by it under paragraph number ten (10) hereof.

14. Should the payments or any part of the payments to be made under this agreement remain overdue and unpaid for a period of thirty (30) days from the days and times on which they shall respectively become due and payable, the contractor shall thereupon be at liberty to shut off the supply of water and electric power or energy contemplated by this agreement and cease to supply or deliver any water or electric power or energy or either of them to the corporation until all moneys due under this agreement shall have been fully paid and satisfied.

15. The contractor shall be considered to have supplied to the corporation, and the corporation shall be considered to have supplied to customers or consumers, electric power or energy to the full capacity of any motor or other appliance or set of appliances with which either the contractor or the corporation may connect a conductor of electric power or energy when and so long as the electric current supplied to such conductor is of sufficient capacity to operate such motor or other appliance, or set of appliances, whether the same be used during only part or the whole of the time thereafter, but no extra charge for power shall be made to the corporation until the gross amount of electric power or energy supplied to the different motors or other appliances of the corporation or its customers or consumers shall exceed seven hundred and fifty horse power.

16. The contractor shall have the right to sell, lease or otherwise dispose of and to deliver water derived from the sources above named for manufacturing and hydraulic purposes of all kinds, and for all other purposes for which water is not to be supplied to the corporation as aforesaid, within the limits of the said Town of Port Arthur and also to sell, lease or otherwise dispose of and to deliver mechanical, electrical and hydraulic power and energy, electricity, compressed air, and power and energy in any other more condensed form derived from the sources above named that may from time to time be in use, and for the purposes of so doing to convey and conduct such water, mechanical, electrical and hydraulic power and energy, electricity, compressed air and power and energy in any other more condensed form through, along, under and over the streets, highways and public places of the corporation, by means of pipes, mains, wires, poles and conduits, and other approved methods that may from time to time be in use for such purposes; provided, however, that in so doing the contractor shall interfere as little as reasonably may be with the existing pavements, sewers, water-mains, pipes and wire and pole lines of the corporation, and shall construct and operate the said works in a proper and workmanlike manner and under competent supervision and in such a way as to interfere with and interrupt as little as possible the public use of such streets, highways and public places; and provided further that the contractor shall give to the corporation twenty days' notice in writing before entering upon any of the streets, highways or public places of the corporation for the purpose of constructing any of the said works or making repairs or alterations thereto and that the said works shall be constructed and all repairs and alterations thereto shall be executed in the manner approved of by a civil engineer to be named by the corporation as least calculated to interfere with the public use of such streets, highways and public places, and

that upon the completion of any of the said works or repairs or alterations the said streets, highways and public places shall be restored as nearly as possible to their original condition to the satisfaction of the said civil engineer and provided also that the contractor shall indemnify and save harmless the corporation from all damages properly recoverable against it by reason of anything done by the contractor under the provisions of this paragraph

17. Should the corporation at any time do away with all its wire and pole lines either throughout the whole of the said town or throughout any particular areas or sections of it in which the congestion of business or traffic may make such a course necessary, the contractor shall also upon receipt of reasonable notice remove his wire and pole lines from above the surface of the said streets highways and public places within the same areas or sections

18. The works to be constructed by the contractor under this agreement (including those mentioned in paragraph 16 hereof) and all the property whether real or personal used or occupied in connection therewith shall during the currency of this agreement be exempt from all taxes and assessments of every kind except only school taxes and local improvement rates.

19. This agreement shall remain in force until the first day of January, 1932.

20. This agreement and all the terms and provisions hereof shall be in all respects binding upon, and shall inure to the benefit of the heirs, executors, administrators and assigns of the contractor and the successors and assigns of the corporation, and the contractor shall have the right at any time to sell, lease, assign, transfer and set over this agreement and all his rights, powers and privileges hereunder to any company or corporation that may be formed for the purpose of carrying out the undertaking or works, and upon notification to the corporation of such assignment or transfer this agreement and all the rights, powers and privileges hereby granted to the contractor shall at once become vested in and exercisable by the said company or corporation to be formed as aforesaid in the same way to all intents and purposes and to the same extent as if the name of such company or corporation were substituted for that of the contractor in this agreement.

21. The contractor shall not offer any inducements in the shape of lower prices or otherwise to consumers to locate in one municipality in preference to another.

22. Time shall be of the essence of this agreement, and this agreement shall be altogether null and void if the contractor shall not within three years from the first day of January, 1899, have completed the works specified in paragraph number one (1) hereof.

In witness whereof the seal of the corporation under the hands of its mayor and clerk has been hereunto affixed and the contractor has hereunto set his hand and seal.

Signed, Sealed and Delivered in presence of

J. McTEIGUE,

Clerk.

EXHIBIT "C"

An Act respecting the Town of Fort William, 1902.

Assented to 17th March, 1902.

Whereas the Council of the Corporation of the Town of Fort William has by petition represented that * * * its contract with Edward Spencer Jenison, set out in Schedule A to the Act passed in the 62nd year of the reign of Her late Majesty Queen, second session, chaptered 120, has lapsed by reason of the default of the said Jenison thereunder, and that no agreement other than that contained therein has been made or entered into with the said Jenison, and the said town requires a water supply as well as power to run its electric lighting and waterworks plants; and whereas it is desirable that the said town should possess the rights to develop 10,000 horse power of electric energy or power at or near Kakabeka Falls and to divert the waters of the Kaministiquia River above said falls necessary for such development, and has prayed for the special enactment in behalf hereinafter contained; and whereas it is expedient to grant the prayer of the said petition.

Therefore His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

* * * * *

13. The Corporation of the Town of Fort William is hereby empowered and authorized to develop at or near the Kakabeka Falls, on the Kaministiquia River, electrical power to the extent of 10,000 horse power of electrical energy, and for such purpose to create by storage dams or other necessary works reservoirs at or near Shebandowan Lake at the head of the Shebandowan River and at or near Dog Lake at the head of the Kaministiquia River or at any other points on said river or other rivers or lakes emptying into the Kaministiquia River above said falls, and to divert such water from the Kaministiquia River above said Kakabeka Falls, as shall be necessary for such development, returning the same to the river again above or below said Kakabeka Falls, and for such diversion are hereby empowered to cut, dig, build and erect all dams, canals, tunnels and other works and improvements necessary therefor as well as for such development.

Development of Kakabeka Falls water power.

14. The said corporation is hereby empowered and authorized to acquire, appropriate, have, hold and enjoy all lands necessary for such development and diversion and for the works, machinery and plant in connection therewith.

Power to acquire lands.

15. Sections 3, 6, 7, 8, 9 and 10 of *The Municipal Water Works Act* shall be read into and form part of this Act as if incorporated herein.

Rev. Stat. c. 235, ss. 3, 6, 7, 8, 9, 10 to apply.

16. The said corporation may cut, dig, tunnel, make, erect and maintain in and upon said lands, canals, tunnels, dams, works, machinery and plant, requisite for the undertaking, as well as for conveying the said electrical power or energy thereto and therefrom, in, upon, through and over any lands lying intermediate between the said source of supply and place of development and the said town, by one or more lines of poles, wires and rods as may from time to time be found necessary.

Construction of works to convey water from sources of supply.

17.—(1) The said corporation, and their servants under their authority, may for the said purposes enter and pass upon and over the said lands, intermediate as aforesaid, and the same may cut and dig up, if necessary, and may erect the said poles, wires and rods through and over the same, and in, upon, through, over and under the highways, streets, lanes, roads or other passages within the said town, or lying intermediate, said place of development and the said municipality, and in, upon, through, over and under the lands and premises of any person within the said town.

Right to enter on lands

(2) All lands, not being the property of the said town, and all highways, roads, streets, lanes or other passages so dug up or interfered with shall be restored to their original condition without delay.

(3) The said town may set out, ascertain, purchase in manner aforesaid, use and occupy such parts of the said lands as the said town may think necessary and proper for the making and maintaining of the said works, and for the purchasing of any lands required for the protection of the said works or for taking up, removing or altering the same, and for distributing such electrical power or energy to the purchasers thereof within the said town or otherwise, or for the uses of the corporation, or of the proprietors or occupiers of the land through or near which the same pass.

Conveying
power through
other lands.

18. For the purpose of distributing the electrical power or energy as aforesaid, the said corporation may cut, dig and erect poles, wires, conduits and other contrivances necessary for conveying such power and may from time to time alter all or any of the said works, as well in the position as in the construction thereof as they may consider advisable.

Expropriation
and arbitra-
tion.

19. The corporation shall have, for the purposes of carrying out the undertaking of developing 10,000 electrical horse power as aforesaid, or any part or parts of such power, and of conveying such power as said Town of Fort William may desire, all necessary powers as to entering upon and taking lands to be exercised by the said corporation in the manner, and as provided for the exercise of such powers when conferred by *The Municipal Act* and by section 20 of *The Railway Act of Ontario*, and in the exercise of such powers, shall do as little damage as may be, and shall make reasonable and adequate satisfaction to the proprietors and others, whose property is entered upon, taken, or used by the corporation, or injuriously affected by the exercise of its powers, to be ascertained as provided by *The Municipal Act*, for like cases.

Works vested
in corpora-
tions.

20. All canals, dams, tunnels, machinery plant and other works requisite for the undertaking shall likewise be vested in and be the property of the said corporation.

Power to
lease or sell
electric power
and to borrow
money.

21. The said corporation is hereby empowered to lease, sell and otherwise deal with such electrical power or energy with any person, party or corporation desiring same upon such terms as such corporation deems meet, and is empowered to borrow money on the credit of the municipality for carrying out and exercising the powers conferred by this Act in the same manner and subject to same provisions as if such undertaking was within the powers exercisable by such corporation under *The Municipal Act*, and the said canals, dams, tunnels, machinery, plant and other works necessary for the undertaking or used in connection therewith, and also the lands acquired for the purpose thereof, and every other matter and thing connected therewith shall be specially charged with the repayment of any sum or sums which may be borrowed by the corporation for the purposes thereof, and for any debentures which may be issued therefor, and the holders of such debentures shall have a preferential charge on the said lands, canals, dams, tunnels, machinery, plant and other works, and the property appertaining thereto, for securing the payment of the debentures and interest thereon.

Partial
exercise of
powers.

22. The powers conferred upon the corporation hereby shall not be construed as being exhausted by any partial exercise thereof, but such powers may from time to time be exercised until the said corporation has developed electrical power to the extent of 10,000 horse power of electrical energy.

Certain Acts
repealed

23. The rights and privileges conferred by this Act or by any lease or grant by the Crown to the said corporation or both shall supersede and have priority over those of the said Edward Spencer Jenison, whether conferred by any Act or Acts of this Legislature or otherwise, and all and every Act or Acts of the Legislature conferring any right or privilege upon the said Edward Spencer Jenison is and are repealed; and the Corporation of the Town of Fort William shall not be liable to the said Jenison for any act done or authorized to be done under the provisions of this

Compensation.

Act, but shall be liable to him for the reasonable value of such lands heretofore patented, purchased and expropriated by the said Jenison in connection with the said enterprise within one mile of Ecarte Rapids or Kakabeka Falls, and for the reasonable value of the plans and surveys as may be found to be of benefit, and such other work of construction as has been done by the said Jenison, and on payment of the sum so found into court the said lands, works and surveys shall become the absolute property of the said corporation or its assigns. Any lands so acquired by the said corporation not reserved for the purposes of the undertaking may be sold by the said corporation.

24. The compensation to be paid as aforesaid shall be ascertained and determined in the manner provided by section 20 of *The Railway Act of Ontario*, all the provisions of which section are hereby incorporated with and made part of this Act; and the said Town of Fort William shall have the right, for the purpose of constructing, maintaining and operating the said works to exercise the powers conferred by the said section 20 upon any railway company to which the provisions of the said section may be applicable, and the said town shall be subject to all the liabilities imposed by the said section upon any such company and generally the several subsections of the said section 20 shall be read as a part of this Act with the several amendments necessary to make the same applicable to the said town and the said works instead of to a railway company as its railway, and in any arbitration under the provisions thereof, the arbitrators shall not make any allowance to the said Jenison in the respect of any right to generate electrical power or to supply water or in respect of his franchises therefor or for prospective profits.

Arbitration.

25. The agreement bearing date the 11th day of March, A. D. 1902, between the Corporation of the Town of Fort William and The Kakabeka Falls Land and Electric Company, Limited, executed by the solicitors of the respective parties thereto, which is set forth in schedule C hereto, is declared to be valid and to be binding upon the said corporation and the said company, the terms thereof are hereby incorporated in and made a part of this Act.

Agreement with Kakabeka Falls Company ratified.

26.—(1) The Corporation of the Town of Fort William shall upon request from the Corporation of the Town of Port Arthur, supply the said corporation, and the said corporation shall be entitled to obtain surplus electric power or energy for municipal, domestic, commercial or other purposes over and above the amount from time to time required by the said Town of Fort William for any purpose at such prices and upon such terms and conditions as may be agreed upon by the said corporations, or in default of agreement, as may be settled and determined by the Lieutenant-Governor in Council.

Request of Port Arthur.

(2) In case the Corporation of the Town of Fort William has not developed sufficient surplus electric power or energy over and above the amount from time to time required by said town for any purpose to supply the demand of Port Arthur for all or any of the purposes aforesaid, the Corporation of the Town of Port Arthur shall be entitled from time to time to apply to the Lieutenant-Governor in Council for an order or direction, that the Corporation of the Town of Fort William develop further electric power or energy, and the said Corporation shall develop such further electric power or energy, not exceeding the whole amount authorized, upon such terms and conditions as the Lieutenant-Governor in Council may determine and supply the surplus thereof over and above the amount from time to time required by said town for any purpose to the extent asked by Port Arthur at such prices and upon such terms and conditions as may be agreed upon between the said corporations or in default of agreement as the Lieutenant-Governor in Council may fix and determine.

Referred to Lieutenant Governor in Council.

(3) The Lieutenant-Governor in Council may authorize and direct the transmission of said power by any route and by any method or appli-

Rights of
Town of Port
Arthur on
default of
Fort William

27. Should the Town of Fort William or its assigns not commence the work of construction hereby authorized before the expiration of two years after the thirtieth day of October, 1902, or shall not have developed power for the purposes of the Town of Fort William before the expiration of three years from said date, then the Town of Port Arthur may upon paying the Town of Fort William the amount of money the said Town of Fort William shall have expended in respect of this legislation and of any arbitration or other proceedings had or taken thereunder, or otherwise in connection therewith and the value of plans, surveys, works, land and other properties done or owned by the said Town of Fort William in connection with the said development, such value in case of disagreement to be arrived at by arbitration as provided by this Act; develop such powers under the terms and conditions now conferred and imposed upon the Town of Fort William

Time for com-
mencement of
work by Port
Arthur

28. In the event of the Town of Fort William or its assigns making default and the Town of Port Arthur becoming entitled to develop power hereunder, the said Town of Port Arthur or its assigns shall commence the work of construction within two years after obtaining such rights and the possession of such lands and properties and shall complete the development of power as required in the case of the Town of Fort William within three years after obtaining such rights and the possession of such lands and properties as aforesaid, and in default thereof the powers of development conferred by this Act upon the Town of Port Arthur shall cease and determine.

Rights of Fort
William if
Port Arthur
develops
power

29. In case power is developed by the Town of Port Arthur or its assigns, then the Town of Fort William shall be entitled to, and have the benefit of all provisions of this Act conferring any right or privilege upon the Town of Port Arthur in the case of development by the Town of Fort William.

Approval of
plans by Com-
missioner of
Crown Lands

30. The plans for the development of the water power and the construction of the works, as provided in this Act, shall be subject to the approval of the Commissioner of Crown Lands, and the same shall be submitted to the Commissioner of Crown Lands and be approved of by him before the work of construction is commenced.

Rights in
water power
at Kakabeka
Falls.

31. In the event of the waters of the Kaminstiquia River formerly divertible by the said Edward Spencer Jenison, as provided in the statutes of the Province of Ontario, known as 62 Victoria, Chapter 120, being left to flow over the Kakabeka Falls on the said river; or in the event of the waters of the said river, if intersected at the Ecarte Rapids, being returned to the river above the said Kakabeka Falls, the rights of Port Arthur and of Fort William to acquire or be supplied with electric power or energy to the extent of 10,000 horse power, shall continue in and apply to the said water power at the said Kakabeka Falls, and the said towns shall without any preference or priority as between them be entitled to such supply from any corporation, person or company developing or utilizing the same on the terms provided in clause 26 of this Act and the said person, company or corporation so developing or utilizing shall supply the same on the terms aforesaid, and in case of development of the said power by the Town of Port Arthur under the provisions of this Act the said town shall return the said water to the said river above the Kakabeka Falls.

Right of Port
Arthur to
assign

32. The Town of Port Arthur shall have the same rights, powers and privileges of assigning or transferring the rights, powers and privileges, or any of them, granted it by this Act, as is by this Act conferred upon the Corporation of the Town of Fort William

Assignee not
to discriminate
between the
towns.

33. In the event of the Corporation of the Town of Fort William or the Corporation of the Town of Port Arthur assigning the rights, properties, powers and privileges granted either of them by this Act, to any person, company or corporation, such person, company or corporation shall not, directly or indirectly discriminate between the said towns in selling or disposing of electric power or energy, or in the granting of rights and privileges, but such person, company or corporation shall grant equal

privileges to the said towns, and sell and dispose of electric power and energy to the said towns on terms equally favorable, having regard to the difference in mileage required to deliver such power, and such person, company or corporation shall supply the same on the terms aforesaid

34. The Corporation of the Town of Fort William shall not exercise the powers conferred by this Act of developing water power and electricity and of acquiring lands and other property from Edward Spencer Jenison until a by-law for such purpose shall have been submitted to the rate-payers of said town entitled to vote on money by-laws and carried by a majority of such rate-payers voting on said by-law

Powers of
Fort William
to be exercised
with assent of
ratepayers.

SCHEDULE C

AGREEMENT

Made this 11th day of March, A. D. 1902, between the Corporation of the Town of Fort William, hereinafter called the Town of the First Part, and the Kakabeka Falls Land and Electric Company (Limited), hereinafter called the Company of the Second Part.

1. Witnesseth that the town agrees to return the water of the Kaministiquia River above the Kakabeka Falls so as to enable the company to have the full advantage of the fall of the water of the said Falls

2. The town and the company will each pay one-half the costs of and incidental to the legislation the said town is now applying for.

3. The company will pay two-thirds of any amount which may be awarded to Jenison for damages or otherwise for anything the town may do by virtue of said legislation. The amount to be paid by the company not to exceed \$5,000 unless power is developed by the company. If power is developed by the company at any time, then the company is to pay two-thirds of the said amount without limit

4. If the town constructs storage works and the company develops the power at Kakabeka Falls, then the company will, if it receive benefits from the said storage works, pay two-thirds of the total expense the town shall be put to in respect to such storage works, including maintenance as well as the original cost. If the storage works be built and maintained by the company, and the water so stored be of benefit to the town, then the town shall pay one third of the cost of such construction and maintenance

5. The town may, on terms to be agreed upon, transfer and assign to the company its rights, properties, powers and privileges under the said legislation subject to the liabilities therein imposed, and the company may, on terms to be agreed upon, transfer all its rights, properties, powers and privileges to the town.

IN WITNESS WHEREOF the parties have signed

The Corporation of the Town of Fort William.

by H. L. DRAYTON,
Their Solicitor.

The Kakabeka Falls Land and Electric Company, Limited.

by H. C. HAMILTON,
Their Solicitor.

WITNESS: J. E. Irving

EXHIBIT "D"

BEFORE THE PRIVATE BILLS COMMITTEE.

May 27th, 1903.

re Bill No. 96, "An Act to extend the provisions of the Act to enable Edward Spencer Jenison to develop and improve a Water Privilege on the Kaministiquia River."

Mr. Walter Barwick, K. C., appeared for the promoters of the bill.

Mr. Geo. S. Watson, K. C., appeared for Mr. Clergue and those opposed to the bill.

Hon. Mr. Harcourt: Who appears in opposition to this bill? The quicker way will be to hear those opposed to it first.

Mr. Watson: I appear in opposition to the bill. I submit respectfully that having regard to the character of the bill itself it would be well to have those in support of the bill speak first, because the effect of this is to rescind an Act of the Legislature passed last session. It is very extraordinary in that respect, and inasmuch as it is proposed by this bill now to rescind an Act of 1902, which was the result of an agreement between the Town of Fort William and the Kakabeka Falls Company, and as it is proposed that that agreement shall now be rescinded with the legislation, I would like very much to hear what would be said in support of it before speaking in opposition to it; however, I am prepared, if you prefer, to say what I have to say in opposition to the bill.

Hon. Mr. Harcourt: Mr. Watson's suggestion may be adopted.

Mr. Barwick: I will only say two or three words. Last year when Mr. Jenison appeared before the committee he did not satisfy the committee of the bona fides, and the committee not being satisfied of the bona fides, rescinded the powers which had been granted to him under two Acts before. Mr. Jenison was not fair with this committee or he would have told the committee last year, as the fact was, that he was not the owner of the proposal, that he was in the position of an employee, and represented Mr. Wegg of Chicago, a capitalist. After the bill was rescinded Mr. Wegg came to Toronto and he has produced to the Attorney-General satisfactory proof of his bona fides in the proposal, and he has produced in addition to the Towns of Fort William and Port Arthur proofs of this, and proof that he is in a position to go on with the proposal and complete it. The Town of Port Arthur is represented here by the Mayor and three of the Aldermen of the town, and Fort William is represented here by its Mayor and three Aldermen. An arrangement has been made by which these municipalities are satisfied with Mr. Wegg's proposal—and I wish it to be understood this is Mr. Wegg's proposal, a man of means—the two municipalities are now satisfied of the bona fides of the proposal, and that it can be carried out. I hold in my hands the agreement in the amended clause of the bill in which we have met the Town of Port Arthur and Fort William on every point. The Mayors of the two towns are here, and I would like to hear a word from either one of them.

Mr. Joshua Dike, Mayor of Fort William: I think it might be proper for me to say, especially bearing upon Mr. Watson's remarks as to it being an extraordinary thing to attempt to rescind the bill of a year ago. In order to understand that statement it would be well for us to look over the ground for a moment. A year ago the Town of Fort William appeared asking certain rights in the development of the Kaministiquia River. It appeared because it was in great stress or need of power, and because there did not seem to be at that time an apparent readiness to develop

power by Jenison. We had positive assurances at that time from the Kakabeka Land and Electric Company that they would undertake the development, and it was very largely on those assurances that we took the stand we did, and as soon as Parliament was over I went to the Soo to make arrangements in that direction, and after spending some days the only offer we got was an offer which could not be accepted, and never will be accepted in connection with the Town of Fort William or Port Arthur. If we would part with all our municipal utilities and assign the rights that we had in the water power under that Act, then an agreement would be entered into to make developments—and there were some other things in connection with it. When that matter was brought before our people they would not consider it for a moment. I then went to work to raise the necessary capital. Our town engaged the engineers of Montreal, Pringle and Sonx, who made a very careful estimate of the power along the rights we have, and acting upon that report I have the capital in sight for the development of that water power of two thousand horse power in the Town of Fort William. At that time Mr. Jenison came along with an appeal against the legislation of last year. The appeal was addressed to His Excellency the Governor-in-Council; and before going any further with our matters I went to Ottawa and interviewed the leaders of the House of Commons in relation to this matter. I also had conferences with the leading members of the Provincial House, and the advices that we received were that it was better for us to come to some arrangement providing the capital could be put up and a suitable agreement made with the Towns of Fort William and Port Arthur, that that was the best way out of a long and interminable lawsuit. The Town of Fort William wanted a speedy development of this power, and took that course, and we are here to-day as the result of acting upon that advice, and we are here with an agreement which satisfies the Town of Fort William and Port Arthur; we are here with an agreement which saves one hundred thousand dollars which has been invested during the last seven or eight years in the development, bringing it along to where it is now, and this agreement places us in sight of a million and a half dollars capital to be expended on this water power, of which that district will get the benefit, and it also guarantees the rights of the town as to price and quantity, and everything is satisfactory to the towns. I think this is a case that appeals very strongly to your good sense and to your reason. I want you to bear in mind that in asking for the revival of these rights and the consummation of this agreement, and the passing of this Act, we were so advised that that was the best way out of the difficulty which had arisen by a very strong appeal, an appeal grounded on this money having been expended during that time, and I think if you take into consideration that the two towns are perfectly satisfied, that we have no agreement whatever with the Clergue interest of a year ago, the committee will be willing to pass this bill. There was an agreement entered into, and partially carried along, but if the difficulties of carrying even the first preliminary steps of that agreement are laid before this committee you will see what weight can be attached and what dependence placed upon any agreement of that kind. There are here to-day the Mayors of Fort William and Port Arthur and some twenty representatives from the two towns, including the President of the Board of Trade and leading citizens and other men of the town, and the two towns are unanimously agreed that this is the best thing for the district, and they are asking you to-day to pass this bill, and pass it as quickly as possible, having regard to the several stages in connection with such business. I do not know that I need say anything more than that just now, excepting the two towns are perfectly satisfied that by passing this bill you are protecting capital of at least one hundred thousand dollars; you are placing us in a position to accomplish what we have in view. I think I may say for the information of this committee that the British capitalists who are prepared to put up this are no less than Sir Hiram Maxim. Our member, Mr. Cameron, has seen the agreement and is prepared to say to you a few words. I think there ought not to be any quibbling as to the rights of these two towns. The Kakabeka Company has sat down on land, bought land along those Falls for seventeen years, and has never done anything towards development, and now we have come to the point where these two towns agree and the capital is in sight, and

we see looming before us the development of this thing. I do not see how the committee and this Parliament with these facts before them can do anything but pass this bill. If there are any other items we shall be prepared to give information.

Mayor Clavette: Mayor Dike has gone so extensively into the question that I will make my remarks short. I endorse all he has said. We have discussed the matter fully amongst ourselves, and we are quite willing to see Mr. Jenison arrange to take it in his past position, providing that certain clauses protecting Port Arthur's rights are inserted, but the main point before you is this: that we would like to see a position taken by this committee in such a strong manner that the opening up of that power will not be delayed any longer.

Mr. Lee: Last year I think one of you two gentlemen opposed the position you advocate now. How far has it progressed since last year?

Mayor Dike: In answer to Mr. Lee's question, I can say that the only thing that prevented the Town of Fort William accepting the offer of Mr. Jenison was, he would not submit any names.

Mr. Marks: A statement has been made here that the people of both towns are unanimous. The people of both towns are not unanimous. The question has never come before the people of either town. Fort William came down here last year to take that power away from Mr. Jenison, and the same gentleman who is arguing now to revive Mr. Jenison's rights, last year advocated taking them away. It has been tied up for seven years through Mr. Jenison, and it is only a year since these other people have had a chance.

Mr. Watson: I think it is highly essential that a short history of the rights and interests of the parties should be referred to, and that the premises should be fully before the committee in order to enable the committee to deal with this proposed important legislation. In the first place, it is probably known to some of the members of the committee that the property upon which this power is proposed to be developed was acquired by Mr. Clergue and those associated with him in the year 1880, and shortly afterward this company was formed, called the Kakabeka Falls Company. That company has expended in the acquirement of property and property interests \$35,000 since that time. That company was incorporated in 1890. It has been using reasonable efforts with the growth of the country and with the demands of the people from that time on to preserve and to facilitate the use of this power. It was incorporated, as I say, in 1890; progress was naturally slow for some years in that vicinity, and as you know it was not until 1896 that things got fairly on the go, so to speak. In 1897 Mr. Jenison, who, my learned friend admits, is a man of no capital, no means, never has been a man of any financial means, acquired some interest in the locality adjoining the premises owned by the Kakabeka Falls Company, and after he acquired that interest, which was comparatively small, and at a trifling expense, he applied to the legislature in the year 1897, and obtained legislation which perhaps many of you are not responsible for, but which I may say, if you will permit me, Mr. Chairman, is, I think, the most extraordinary piece of legislation that was ever put on a statute book. By that Act of 1897 Mr. Jenison acquired the most extraordinary rights. The effect of this legislation was to enable him to develop all the power on the river and in the Kakabeka Falls owned by my clients with the exception of a small power of four thousand cubic feet per minute, which would produce about 920 horse power, the whole capacity of the Falls not being less than 20,000 horse power; so that Mr. Jenison by this Act sought and succeeded in taking away from Mr. Clergue and those interested with him practically all their property interests, for which they had paid a very large sum of money. Now, Mr. Chairman, it is of importance, bearing upon this, just to advert for a moment to some of the features of the Act. For instance, as shown by the marginal notes, Mr. Jenison was given power to divert the waters of the rivers, to expropriate lands, authority to expropriate highways, authority to cross-road allowances, authority to lower the bed of the Kaministiquia River and of the Mattawin, authority to withdraw waters from the

lakes, authority to flood ungranted Crown Lands, authority to erect poles for electricity—such powers as the people are in almost constant rebellion against companies obtaining—and I venture to say that there is no legislation on the statute books of this Province where any individual has obtained such extraordinary powers as were given there. That was extended in the year 1890, and was done for the purpose of developing the interests of the community.

Mr. Carscallen: The time was extended, you mean?

Mr. Watson: Yes; he was to develop within a limited time as provided for in this Act; the time was extended in 1890 by supplementary legislation. He retained those interests until the year 1902. The Town of Port Arthur and every one else about there was entirely dissatisfied with the position of affairs because nothing had been done and because Mr. Jenison was a man of no means and had no ability to perform the undertaking. An agreement was entered into between the Town of Fort William and Mr. Clergue and those associated with him, by which Mr. Clergue and the Kakabeka Falls Company would proceed in the matter—that is, an arrangement was made by which they would undertake within a reasonable period to develop these Falls and the Town of Fort William then made application to this committee and to the Legislature to rescind the extraordinary rights which had been granted to Mr. Jenison, and those rights were rescinded. That was tardy justice to Mr. Clergue and those associated with him, but it was no more than fairness and justice to him and his associates, to give back what was theirs by original grant, and what they had paid for and upon what in the meantime they had expended the sum of \$65,000 upon. Mr. Jenison had his extraordinary rights, and his chance for five years. He did nothing during those five years, he was wholly unable to do anything, and then the rights were given back to the Kakabeka Falls Company, the rights which they possessed. Now, Mr. Chairman and gentlemen of the committee, I submit this is no time for a change against Mr. Clergue and those associated with him. This is no time for the committee or the Legislature or the members of the committee to make a change as against the Kakabeka Falls Company, Mr. Clergue and those associated with him, to take again from them all their rights and all their property interest, because they are the ones that had expended the money there, the ones that have the capital and are prepared to do it; and in connection with that I may say that Mr. Clergue has stated to me that by the autumn of next year he will undertake to develop at least ten thousand horse power on these falls for the use of the towns and others requiring horse powers, that the engineering staff is now ready to go to work, and will go to work immediately, and by the autumn of next year he will undertake to the Town of Fort William and the Town of Port Arthur if necessary, that at least ten thousand horse power will be developed and completed and ready for delivery. What more do you want than that? As against that, what is proposed? Mr. Jenison is out of the matter altogether, the promoters say he is unable to do anything himself, and he has assigned all his interest to some Anglo-American company; therefore the man who acquired these rights in 1897 has now no interest in the matter.

Mr. Lee: See what he says in section 8.

Mr. Watson: Yes; but I was going to refer to section 7, where it is proposed that "The said company shall within four months from the passing of this Act pay to its credit at the Bank of Montreal at Fort William the sum of one hundred thousand dollars, which sum shall be expended by the company upon the works referred to in the agreement set forth in the said schedule within twelve months from the passing of this Act." So that nothing is proposed to be paid now, and if the assignment was made you will see it is provided for, and in section 4, in the event of the assignment being made and completed to this company—and it may not be, and meantime Mr. Jenison has no means—if it is completed, then this company may within four months put up one hundred thousand dollars. If they do not, where is your protection? You are just precisely in the same position and Fort William is precisely in the same position—there is no guarantee here by any one who has any means—the Anglo-American does not guarantee or give any undertaking—

Mr. Lee: Neither gives any undertaking.

Mr. Watson: In connection with that I have said what I have been instructed to say, and I think it is right. Mr. Clergue is here and he will say whether or not I am justified in the statement that I have made to the committee. Just one thing I have pointed out the circumstances to show the extraordinary position of Mr. Jenison, that these rights are entirely passed out of his hands, and his rights are not now being revised but being passed over to some American capitalists. Why should that be done? Then the position of the Town of Fort William is a little anomalous. In the Act of last year there was no time limit within which the Kakabeka Falls Company should proceed, and I am instructed that the Falls Company has never been applied to by the town since then to make more rapid progress, to do anything. That company is not in default to-day in respect of any obligations.

Mr. Lee: This was passed in February, 1902, and they were to commence in two years.

Mr. Watson: That is for the town.

Mr. Lee: But they had the right to assign to another party.

Mr. Watson: Why did not they do so? On page 265 the agreement appears:

"1. Witnesseth that the town agrees to return the water of the Kaministiquia River above the Kakabeka Falls so as to enable the company to have full advantage of the fall of the water of the said Falls.

"2. The town and the company will each pay one-half of the costs of and incidental to the legislation the said town is now applying for."

As a matter of fact, the agreement called upon the company to pay one-half the expenses incidental to it, and since then the town has made no request whatever upon the company, has not communicated with the company, and in the absence of communication comes here and seeks to rescind this agreement, an agreement which was solemnly entered into between the parties, and with no time limit. The proposition is that Mr. Clergue and those associated with him will proceed at once—if it had been insisted on they would have proceeded earlier—but they will proceed at once and make the development I have indicated. I submit it would be a gross injustice to cancel and annul that solemn agreement which was made a year ago and which the company is willing to perform on its part, and for which it has paid—it would be a gross injustice to take from the Kakabeka Falls Company, Mr. Clergue and those with him, all their property interest, and it goes without saying that Mr. Jenison got from them practically the whole of their property, and he is seeking again to take from them the whole of their property interest. Is that in the interest of the community? Is it in the interest of the public? Mr. Chairman, it is certainly strongly against the ordinary course of legislation, and is the cancellation and nullifying of the interests of the individual. Mr. Clergue is here.

Mr. Clergue: Mr. Chairman and gentlemen of the committee: It becomes necessary for me to correct an impression which our solicitor has just given. Our solicitor has just told you that there was an agreement entered into between the Kakabeka Falls Company and the Towns of Fort William and Port Arthur, under which the Kakabeka Company undertook certain development to these Falls. Gentlemen, that is the impression on the part of our counsel, taken perhaps from the statements of the gentlemen who preceded him. We have made no such agreement, no such agreement is contemplated by the legislation which it is now asked that this committee should nullify. I am extremely anxious that this committee should have clearly in mind what were the arrangements between the City of Fort William and the Kakabeka Falls Company when the last session was had. It was simply this: The citizens of Fort William and Port Arthur both combined, having lost their heart in the development of that important power, and came to this Legislature at the

last session and demanded that the cities of Fort William and Port Arthur should be given rights themselves which Jenison had formerly possessed, to undertake the development. You will find this was the legislation had last session: That the combined falls on the Kaministiquia River, one was a 60-foot falls and the other 110, should be divided between the cities of Port Arthur and Fort William on the one side and the Kakabeka Company on the other—ourselves. We had owned the lower falls; we had made considerable expenditure; we were just preparing to develop it when Jenison came on and absorbed our rights by unfair and unjust legislation, and also all other rights in the river. The city of Fort William and Port Arthur came to us and made this proposition: If you will concur in the legislation and associate with us in securing it at Toronto we will ask the Parliament now to give the cities of Fort William and Port Arthur the right to develop this power which we have been so long waiting for at the Ecarte Falls—that is, the 60-foot falls. We said: Very well, we will concur with you in that. We joined action and came to the Legislature and represented jointly to the Legislature that Jenison's rights were impossible of development and insisted that the Legislature should give these rights in the first instance to the city of Fort William. The city of Fort William secured Jenison's rights. We secured only the rights in our fall of 110 feet. We secured no rights in the Jenison property proper by the legislation of last session; it was the city of Fort William which secured the right to take over all of Jenison's properties, and all of his franchises and rights to develop the Ecarte Falls. The only provision we got was in taking the water from the Ecarte Falls they must discharge it back into the river over the head of our falls. The city of Port Arthur came in to preserve its rights to this extent: It was provided that if the city of Fort William failed to develop this power at the Ecarte Falls within two years, then the rights which the city of Fort William acquired should be relegated to the city of Port Arthur; so for two years the City of Fort William had the exclusive right to develop that power, and then came in the city of Port Arthur. Thus were the rights of these two communities preserved and our rights preserved to the extent of the water being taken back over the head of our Falls. There has never been any agreement or the attempt of an agreement between the cities of Port Arthur, Fort William and the Kakabeka Falls Co. We acquired and paid for the Falls and it is our intention to develop them, as our solicitor has said, and we are now prepared to go and commence that development this spring and complete it during the fall of next year. We are not bound to do anything of that kind, but I simply make that statement in good faith. We think our history in the past ten years should become justification for the substantiality of our statement. You know our structure has just reached completion, that our blast furnace will be done in the following month, and we are now prepared to go and undertake the Kakabeka Falls development. I desire to get out of the minds of the members of the committee that we have been in default in any way.

Mr. Lee: You say you own the Falls?

Mr. Clergue: Yes.

Mr. Lee: Why have not you developed them?

Mr. Clergue: We could not develop them from the time Jenison got his charter.

Mr. Lee: I thought you said one Falls was given to you and one to him?

Mr. Carscallen: No; Mr. Clergue made it very plain.

Mr. Clergue. All the water was taken away from our Falls and delivered into the river again below our Falls. Consequently for the last seven years, until last session, we have been unable to undertake any development whatever. Jenison has come back through another form and another disguise, and has again deluded them with the promise of a \$100,000 deposit four months after the legislation is granted, or in other

words he asks for an option on that power for that length of time. We ask this committee to leave the legislation the way it is. The city of Fort William can ask for no greater rights than they have under this legislation. The city of Fort William has exclusive right for 10,000 horse power ahead of us for anybody else; if they cannot develop it they can assign those rights, and they have the right to assign to Jenison or the Anglo-American company 10,000 horse power. Jenison is only prepared under this Act to develop 5,000; they have the first right to 10,000 horse power. They can assign their rights with the scratch of a pen to the Anglo-American Company, and our power will be preserved, and we can go on and develop our power simultaneously. The only objection to our proposition is that the Jenison interests have deluded our friends of Port Arthur and Fort William, for whom we have the greatest respect, but the whole purpose is to still take away from us the opportunity of developing this additional power, and with the Jenison legislation restored you must understand that the water will again be delivered below our Falls and our power is lost.

Mr. Barwick: I am very glad Mr. Clergue made that statement with regard to the agreement. I hope the committee will understand no agreement was ever entered into between Mr. Clergue and the town.

Mr. Foy: I understood from Mr. Watson it was an agreement for legislation.

Mr. Barwick: No.

Mr. Foy: That they combined to ask for that legislation?

Mr. Barwick: There was no agreement between the town and the Clergue interests for any development whatever at the Kakabeka Falls. Then I would like to say that this bill was passed when Mr. Hardy was Premier of the government of the day, and the present Attorney-General Gibson and Mr. Hardy took full responsibility for the bill, and I think protected Mr. Clergue's interest, and at the time that bill was passed the Clergue Company never owned one foot of land at the Kakabeka Falls; what they did own was two mining locations. The bill provided that when Jenison ran through their property he should pay them the price as determined by arbitration. An arbitration was held, the amount fixed and the amount was paid to Mr. Clergue, and the company submitted to the amount and never appealed from the arbitration, and they hold the money in their pockets to-day. Last year what happened was this: Mr. Jenison was not frank enough with the Towns of Port Arthur and Fort William, and he did not satisfy the Town of Fort William and the Town of Port Arthur as to the amount that he had expended and as to the ability of his backers to go on and develop that work, and not doing so, and not being frank enough, this committee took away his rights on which he and his people at that time had expended one hundred thousand dollars. Mr. Jenison naturally appealed for justice, and he appealed with some reason to the Town of Fort William and the Town of Port Arthur, and his employers and his backers went there with him and they satisfied the Town of Port Arthur and the Town of Fort William, and the Mayors of these two towns will bear me out, that they had expended one hundred thousand dollars, and that they had associated with them not American capitalists—British capitalists—Hiram Maxim and Sons, who are prepared to go on with the work, and the agreement with regard to the finding of that money has been submitted to the member for the district, for Fort William, the Attorney-General, the Mayors of the two towns, and they are all satisfied that justice shall be done to Mr. Jenison, and that he should have an opportunity of going on and developing his works, and they are satisfied that they will be developed. That is the real position. As to the question of asking Mr. Jenison to assign his rights to the Anglo-American Company he has agreed to do so, and when this bill passes or before it passes, that assignment will be executed to a substantial company to the satisfaction of the Mayors of the two towns and to the Chairman or Attorney-General.

Mr. Marks: The question has never been submitted.

Mr. Barwick: But here are the Mayors of the two towns, and they are the people who speak for the towns.

Mayor Dike: I am advised that Mr. Marks does not own a foot of land in Fort William, and if that is the fact I submit Mr. Marks has not any ground for opposing the legislation which the Town Council and citizens are asking for.

Mr. Lee: Why do you not make the assignment to Jenison?

Mayor Dike: In reply to that question, I outlined in my remarks that a proposition was made to me from Mr. Clergue; that proposition was not acceptable in any degree by the people of the town, and we proceeded to raise money for the development at Ecarte Falls, and we were met with an appeal against the legislation of last year. Before proceeding further I went to Ottawa and interviewed gentlemen there and gentlemen here and we were advised that the wisest course, the most equitable course to pursue in the interests of justice, was to take the course we are doing.

Mr. Lee: Under this Act here you have the power to lease or transfer over your authority.

Mr. Barwick: No.

Mr. Marks: I wish to say that I own a quarter interest in 500 lots in the Town of Fort William, and my partners and myself this morning bought 700 lots in Fort William.

Mr. Lee (reads statute): Why did not they transfer their power over?

Mr. Barwick: They could not; they had no power under that Act to transfer their rights, and Jenison had no power of exercising the rights and going on with the works unless his rights were restored under the Acts.

Mr. Lee: The whole difficulty arises in about two-thirds of the bills of this kind because they come here charter mongering, and having no money to carry out their schemes. If I had my will I would make them put up security before the bill goes through.

Mr. D. C. Cameron, Member for Fort William: Not being so well informed I will not say very much. I have been referred to as one who has seen the agreement. I may say, so far as I can judge, they are acting in good faith, but I cannot, of course, assume responsibility for what they say they will do. I can only say, so far as I can judge from the correspondence, they seem to act in good faith and mean to carry out the contract. I could not assume responsibility further than that, as there is no guarantee except their statement.

Mr. Royce: In the absence of counsel for the Mackenzie-Mann Company I was asked to state that Mackenzie & Mann object to this; they say it would interfere with their roadway and with their bridges at Ecarte Falls. They are opposed to the bill on that ground, and on the ground that they do not believe it is put forward in good faith.

Mr. Cameron, M. P. P.: With regard to the favor of the people in Fort William and Port Arthur to this bill I think I am justified in saying that the great majority of the people in those towns are in favor of carrying out this proposition contained in this bill.

Mr. Barwick: Under this present bill unless this company puts up one hundred thousand dollars in four months to be expended in the construction, everything is restored to the two towns as under the bill of last session.

Mr. Conmee: I am not opposing the bill, but I do not see anything in the measure that if this bill goes through the power will be developed. I do not see anything in this agreement that will amount to more than a

mere option. There are in the bill itself three or four points that I fear are weak and which I do not think the people of either town, if they understood them, would agree to. In the first place, they have to pay a flat rate of fifteen dollars per horse power for forty years—I think that is a long period at that rate, and it is not a cheap rate. Then, they are exempt from all taxes except school taxes for forty years—a pretty long time, too; but the most objectionable feature is that it provides that they have exclusive right for the sale of electricity in the Town of Fort William for forty years. There are several water powers on this river nearly as important as this water power, and there is no reason why the Town of Fort William should be made a closed box. I fear in the drafting of this agreement the lawyers have gone astray. I know the good disposition of the Mayor of Fort William, his energy and desire to promote the interests of his people in every way, but I assume these matters have escaped his notice.

Mr. Pattullo, M. P. P.. I desire not to discuss the bill. I judge from your suggestion, Mr. Chairman, that you wish to see the matter pressed to a conclusion. I took considerable interest in this question when it was up before, and I felt then and I have always felt since that this committee of the legislature did Mr. Jenison an injustice before. I shall not press this bill upon you to remedy an injustice, but the recollection of it ought to lead us to consider very carefully the proposals from that quarter now. I am going to support the bill because I see the two towns are united upon it; they know their local interests there. I have had occasion sometimes to criticize or judge the wisdom of proposals that have come, but at any rate I think it is safe to assume that these two towns know their own interests, and for that reason I support it.

The bill was then put to a vote, and on the yeas and nays being taken it was declared lost.

I certify the foregoing twenty-one pages to be a correct report of the discussion upon this bill (No. 96) before the Private Bills Committee of the Ontario Legislature, Toronto, May 27th, 1903.

ERNEST NIELD,

C. S. R. Official Reporter.

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